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TABLE OF CONTENTS

EXECUTIVE ORDERS, PROCLAMATIONS AND ADMINISTRATIVE ORDERS

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION No. 618

DECLARING THE PERIOD FROM SEPTEMBER 21 TO 27, 1959, AS NATIONAL HEALTH WEEK AND THE LAST DAY THEREOF AS WORLD HEALTH DAY

WHEREAS, the protection and promotion of individual and community health is a prime obligation of organized society;

WHEREAS, in the fulfillment of this obligation, the Government and the private sector composed of practitioners in the medical and related fields and volunteer civic organizations devoted to health have shown exemplary dedication; and

WHEREAS, it is but fitting that the joint efforts of the various public and private health organizations in the protection and promotion of health be brought to the attention of the people;

NOW, THEREFORE, I, Carlos P. Garcia, President of the Philippines, by virtue of the powers vested in me by law do hereby declare the period from September 21 to 27, 1959, as National Health Week, and the last day thereof, as World Health Day.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 11th day of September, in the year of Our Lord, nineteen hundred and fifty-nine, and of the Independence of the Philippines, the fourteenth.

[SEAL]

CARLOS P. GARCIA
President of the Philippines

By the President:

JUAN C. PAJO
Executive Secretary

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MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION NO. 619

DECLARING SATURDAY, SEPTEMBER 19, 1959, AS LAW DAY

WHEREAS, the administration of justice is indispensable to a sound and vigorous democracy;

WHEREAS, lawyers play a vital role in the administration of justice; and

WHEREAS, it is but fitting that such an important role of lawyers be brought to the attention of our people;

NOW, THEREFORE, I, Carlos P. Garcia, President of the Philippines, by virtue of the powers vested in me by law, do hereby declare Saturday, September 19, 1959, as Law Day. I urge the various bar and lawyers' associations to celebrate the day with appropriate programs.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 11th day of September, in the year of Our Lord, nineteen hundred and fifty-nine, and of the Independence of the Philippines, the fourteenth.

[SEAL]

CARLOS P. GARCIA
President of the Philippines

By the President:

JUAN C. PAJO
Executive Secretary

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION NO. 620

EXCLUDING FROM THE OPERATION OF PROCLAMATION NO. 435, SERIES OF 1932, WHICH ESTABLISHED THE LOO SETTLEMENT FARM SCHOOL SITE SITUATED IN LOO, BUGUIAS, BENGUET, MT. PROVINCE, A CERTAIN PARCEL OF LAND EMBRACED THEREIN AND DECLARING THE SAME OPEN TO DISPOSITION UNDER THE PROVISIONS OF THE PUBLIC LAND ACT

Upon the recommendation of the Secretary of Agriculture and Natural Resources and pursuant to the provisions of sections 83 and 88 of Commonwealth Act No. 141, as amended, I, Carlos P. Garcia, President of the Philippines, do hereby exclude from the operation of Proclamation No. 435, series of 1932, which established the Loo Settlement Farm School Site situated in Loo, Buguias, Benguet, Mt. Province, a certain parcel of land embraced therein and declare the same open to disposition under the provisions of the Public Land Act, which parcel of land is more particularly described as follows:

Lot No. 5, Swo–12484 (Claimed by Dampa)
(Farm School site)

Beginning at a point marked 1 on Bureau of Lands Plan Swo-12484, N. 9° 58′ E., 1788.00 meters from B.L.B.M. No. 1, barrio of Loo, municipality of Buguias, thence N. 34° 45′ W., 179.64 meters to point 2; N. 69° 42′ W., 126.52 meters to point 3; S. 45° 02′ E., 71.38 meters to point 4; and S. 23° 20′ W., 156.08 meters to the point of beginning; containing an area of 16,250 square meters. Points 2, 3, and 4, crosses on stones. Bounded on the northeast and southeast, by property claimed by Dampilag; on the southwest, by lot No. 6; and on the northwest, by lot No. 3.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 11th day of September, in the year of Our Lord, nineteen hundred and fifty-nine, and of the Independence of the Philippines, the fourteenth.

[SEAL]

CARLOS P. GARCIA
President of the Philippines

By the President:

JUAN C. PAJO
Executive Secretary

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION NO. 621

EXCLUDING FROM THE MANILA INTERNATIONAL AIRPORT WHICH IS A PORTION OF THE FORMER U. S. MILITARY RESERVATION, KNOWN AS NICHOLS FIELD, A CERTAIN PARCEL OF LAND EMBRACED THEREIN SITUATED IN THE

MUNICIPALITY OF PARAÑAQUE, PROVINCE OF RIZAL, ISLAND OF LUZON, AND RESERVING THE SAME FOR HOUSING PROJECT PURPOSES EXCLUSIVELY FOR LOW-SALARIED EMPLOYEES OF THE CIVIL AERONAUTICS ADMINISTRATION

Upon the recommendation of the Secretary of Agriculture and Natural Resources and pursuant to the authority vested in me by law, I, Carlos P. Garcia, President of the Philippines, do hereby exclude from the Manila International Airport which is a portion of the former U. S. Military reservation, known as Nichols Field, a certain parcel of land embraced in the said airport situated in the municipality of Parañaque, province of Rizal, Island of Luzon, and reserve the same, under the administration of the Civil Aeronautics Administration, for the construction of a housing project exclusively to be leased and occupied by low-salaried employees of the Civil Aeronautics Administration while they are employed in said office and not thereafter, subject to private rights, if any there be, which parcel of land is more particularly describ-described as follows, to wit:

Portion of parcel 1, Psu–2031
(For subdivision of housing project of the employees of the Civil Aeronautics Administration)

"A parcel of land (portion of parcel 1, Psu–2031 (Nichols Field) otherwise known as Fort MacKinley covered by TCT. No. 2288), situated in the municipality of Parañaque, province of Rizal, Island of Luzon. Beginning at a point marked 1 on the attached sketch plan, being N. 75° 52′ W., 521.33 meters from B.L.L.M. 1, Parañaque, Rizal, thence N. 9° 26′ W., 237.01 meters to point 2; thence N. 46° 50′ E., 96.18 meters to point 3; thence N. 0° 59′ E., 189.00 meters to point 4; thence N. 52° 20′ E., 89.64 meters to point 5; thence S. 48° 52′ E., 83.74 meters to point 6; thence N. 76° 50′ E., 111.40 meters to point 7; thence S. 57° 35′ E., 49.95 meters to point 8; thence S. 0° 05′ W., 215.88 meters to point 9; thence S. 28° 30′ W., 54.12 meters to point 10; thence S. 59° 57′ W., 131.98 meters to point 11; and thence S. 48° 40′ W., 238.17 meters to point 1, point of beginning; containing an approximate area of 117,706 square meters."

NOTE: All data are approximate and subject to change based on future survey.

To carry out the purpose for which the land is reserved, the Civil Aeronautics Administrator is hereby authorized to make the necessary rules and regulations so that only low-salaried employees of the Civil Aeronautics Administration are given accommodation in the project.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 14th day of September, in the year of Our Lord, nineteen hundred and fifty-nine, and of the Independence of the Philippines, the fourteenth.

[SEAL] CARLOS P. GARCIA
President of the Philippines

By the President:

ENRIQUE C. QUEMA
Assistant Executive Secretary

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER No. 308

CONSIDERING THE PREVENTIVE SUSPENSION OF MR. JOSE P. TRINIDAD, UNDERSECRETARY OF FINANCE, AS SUFFICIENT PUNISHMENT FOR GRAVE NEGLECT IN THE PERFORMANCE OF HIS DUTIES

This is an administrative case against Mr. Jose P. Trinidad, Undersecretary of Finance, for grave misconduct in office and conduct prejudicial to the best interest of the service in that, in violation of Republic Act No. 35 as amended by Republic Act No. 901, he authorized the release tax free of eighteen shipments of steel sheets and one shipment of industrial machinery to the Great Oriental Maunfacturer and Trader, a sole proprietorship owned by one Robert Tan, resulting in damage to the Government in the sum of ₱106,040.22 in duties and taxes that should have been collected on these shipments.

The Department of Finance adopted the policy that importations made directly by a tax-exempt industry and shipments which, though imported originally by a non-tax-exempt importer, were transferred while in transit to a tax-exempt industry were entitled to release tax free, subject to the following conditions: (1) that the goods be among those specifically mentioned in the grant of tax exemption as raw materials or as factory machinery and equipment; (2) that the goods imported be intended for the use of the tax exemption grantee in his tax-exempt industry; and (3) that if the tax-exempt industry was not the original importer, the shipment should have been transferred to him while in transit and before entering Philippine territorial waters. The respondent was entrusted with the implemention of this policy.

On June 22, 1956, Robert Tan, owner of the Great Oriental Manufacturer and Trader, was granted a tax exemption certificate for the operation of a galvanized iron plant at Lucena, Quezon, authorizing him to import tax free "black iron or steel sheets" as raw materials. Subsequently, he filed applications for tax-free release of certain importations. Except for the first shipment, the release of which appears to have been regular, it is significant to note the following facts regarding the remaining shipments:

1. None of the shipments was originally imported by Robert Tan and all the original importers were not tax exempt, so that if no tax-free release authority had been issued by the respondent, these shipments would not have been released by the Bureau of Customs without the payment of the corresponding duties and taxes.

2. Most of the original importers were in one way or another connected with Robert Tan; hence it can be inferred that the procedure followed by him had been deliberately adopted to evade the payment of duties and taxes.

3. The shipments did not consist of black iron or steel sheets, the only materials that Robert Tan was authorized to import tax free, but of galvanized iron, a finished product; and in the case of the shipment of industrial machinery, it did not consist of machinery usable in a galvanized iron factory but of industrial sewing machines for the manufacture of shoes and slippers.

4. Robert Tan never constructed a factory.

5. Robert Tan or the original importers appear to have sold all the shipments to third parties oven before they were inspected by the Bureau of Commerce as required by Act No. 3595.

6. If these shipments had been really transferred to Robert Tan, the transfers could not have taken place while the shipments were in transit but after the goods had arrived in port.

If Robert Tan's applications had been carefully screened, his fraudulent scheme would have been discovered because of certain circumstances indicating fraud. Thus, it appears that in no case was the indorsement of the bill of lading to him or his firm dated, and he never once mentioned in his affidavit the date he allegedly acquired the shipment nor the consideration paid for it. Moreover, the code numbers of the Central Bank release certificates showed that the shipments consisted of galvanized iron, and this alone was sufficient to disclose Robert Tan's fraudulent scheme. Likewise, the photostats of the commercial invoices submitted by Robert Tan showed that the goods were branded, thereby indicating that they were not raw materials but finished products. Then, too, the suppression of the consular invoices in all of Robert Tan's shipments over the long period of time that those shipments covered and repeated eighteen times should have aroused suspicion. Again, the description given in the invoices and bills of lading was "plain steel sheets" or simply "steel sheets," whereas the tax exemption certificate granted to Robert Tan authorized the tax-free importation of "black iron or steel sheets" only. Finally, as regards the shipment of industrial machinery, the description was hopelessly vague and yet the Department of Finance processors did not inquire from Robert Tan what kind of machinery was contained in the shipment nor require any supporting record to establish that the shipment was for machinery to be used in a galvanized iron plant.

Notwithstanding the irregularities in the applications and supporting papers filed by Robert Tan, the Depart-

ment of Finance processors recommended approval of the applications and submitted them to the respondent for action. Without even once going over the documents accompanying the applications and relying solely on the reports of his processors, the respondent approved the applications and signed the corresponding tax-free release authorities. With one exception, his approval appears to have been given as a matter of routine, within twenty-four hours after the papers were submitted to him.

The duties and taxes due on the shipments amounted to ₱106,040.22 and to collect the same, the Government has been constrained to file a suit against Robert Tan.

It appears that the respondent did not require his processors to determine the dates of the alleged transfers of shipments from the original importers or consignees to Robert Tan. Nor did he himself, when the papers were submitted to him, attempt to find out whether the shipments were transferred while in transit or after their arrival in port.

The respondent did not, in even one instance, check the supporting papers accompanying the importation in order to determine whether his processors' recommendation was justifiable. Had he done so, he would have noted certain irregularities, such as the suppression of consular invoices, the undated endorsements and the absence of statements as to the dates of the alleged transfers of shipments to Robert Tan.

In authorizing the tax-free release of the eight shipment, the respondent imposed the condition that the raw materials be stockpiled subject to inspection by examiners of the Department of Finance. Yet he authorized the release of ten subsequent shipments without once ordering such an inspection.

The respondent knew that Robert Tan's factory was not and had never been in operation.

By way of defense, the respondent contends that the tax-free grant extends even to shipments transferred while in port. This contention is untenable since it is plain that once an importation begins—and it begins upon entry of the shipment into Philippine waters—duties and taxes attach to it. Moreover, his interpretation of the law runs counter to the established policy of the Department of Finance.

The respondent argues that if there have been irregularities in the processing of the shipments, these were committed by his subordinates, for whose mistakes he should not be blamed. This argument is pointless, for the respondent is not being held responsible for the mistakes of his subordinates but for his own grave neglect in not exercising effective supervision over them.

Finally, the respondent contends that the damages, if any, suffered by the Government were not due to his own acts but to the negligence of the Bureau of Customs which released the shipments, not to Robert Tan as his tax-exempt release authority required, but to the original importers or consignees. While perhaps technically the goods were released to someone else, the fact remains that without the tax-free release certificates the goods would not have been released to anyone unless the duties and taxes had been paid. But the evidence shows that they were in fact released to Robert Tan. Even granting, however, that the goods were not released to Robert Tan but to others, this would not in any way affect the respondent's liability in issuing the tax-free release certificates to Robert Tan.

In view of all the foregoing, the respondent is guilty of grave neglect in the performance of his duties, aggravated by the fact that he was aware that the use of tax exemption privileges resulted in a decline in government revenues and that the privilege was capable of being misused to evade the payment of duties and taxes. However, as it appears that the respondent was not impelled by any corrupt or dishonest motive and that he has had more than thirty years of satisfactory service, his preventive suspension is considered sufficient punishment for his offense. Accordingly, he is ordered reinstated in the service.

Done in the City of Manila, this 31st day of August, in the year of Our Lord, nineteen hundred and fifty-nine, and of the Independence of the Philippines, the fourteenth.

CARLOS P. GARCIA
President of the Philippines

By the President:

ENRIQUE C. QUEMA
Assistant Executive Secretary

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 309

CONSIDERING MR. LAUREANO S. MARQUEZ RESIGNED FROM OFFICE AS DIRECTOR OF ANIMAL INDUSTRY

This is an administrative case against Mr. Laureano S. Marquez, Director of Animal Industry, for dereliction of duty and conduct prejudicial to the best interest of the service in connection with the importation of cattle for breeding purposes. The case was investigated by a committee headed by the Secretary of Justice.

It appears that on April 8, 1957, the Bureau of Animal Industry (BAI), represented by the respondent as director thereof, and the Manila Livestock Dealers Corporation, represented by its manager, Mr. Jose A. Rojas, entered into a contract whereby the corporation undertook to sell to the Bureau 733 head of heifers consisting of 366 Bali and 367 Madura cattle of specified age and physical conditions. As the Indonesian Government did not allow the exportation of Bali cattle and only granted an export permit for 500 head of Madura cattle and 233 head of Ongole cattle, the contract was amended accordingly. Both the contract and its amendment were with the written approval of the Secretary of Agriculture and Natural Resources.

Pursuant to the contract, a letter of credit for ₱249,612.15 covering the total purchase price of the cattle was opened with the Philippine National Bank on May 17, 1957, in favor of the Manila Livestock Dealers Corporation. The letter of credit contained the condition that, before it could be withdrawn, certain documents enumerated therein should be presented. Some of the stipulations of the contract referred to the examination and selection of the cattle by BAI representatives to be sent to Indonesia for the purpose and the immunization and quarantine of the animals before the final selection and shipment.

Respondent designated a team of two veterinarians headed by Dr. Enrique de Leon and with Dr. Julio Fernandez as member to go to Indonesia to select and accept the breeder cattle. They arrived in Indonesia on May 17, 1957, but it was not until June 16, 1957, that the cattle were ready for their inspection. The selection was slow. By July 25 only 130 head had been selected and conditionally accepted by the two government veterinarians, thus leaving 603 yet to be selected to complete the 733 head called for in the contract. One reason for the delay in the selection was the fact that the two government veterinarians were observing strictly the provisions of the contract.

Meanwhile, upon the representations of the Philippine Charge d'Affaires who complained to respondent of the alleged non-cooperation of Dr. de Leon for insisting on the observance of the provisions of the contract with reference to the period of quarantine, respondent, without the approval of the Secretary of Agriculture and Natural

Resources, reduced the quarantine period from three weeks (as stipulated in the contract) to five days. He communicated his decision to Dr. De Leon in a radiogram dated July 29, 1957.

Of the 733 head of cattle called for in the contract only 191 head were selected and accepted by Drs. De Leon and Fernandez. This fact was verbally communicated to the two representatives of the suppliers in Indonesia who pleaded to have also 542 rejected animals loaded on the same boat with the 191 head so that respondent and the Manila Livestock Dealers Corporation could decide what price should be paid for them upon their arrival in Manila. Dr. De Leon consented to the arrangement.

The 733 head of cattle, including the rejected ones, were loaded on the *s.s. Waiwerang,* which left Indonesia on August 1, 1957, and arrived at the Port of Manila on August 7, 1957. On August 6, 1957, the manager of the Manila Livestock Dealers Corporation wrote the respondent requesting amendment of the letter of credit in its favor "to the payment against presentation of bank guaranty and release certificate," which amendment was allegedly necessary because of the delay in the receipt of the documents by its bank and because the Bureau had only 48 hours within which to unload all the cattle, otherwise it would be responsible for payment of demurrage.

The request for amendment of the letter of credit was discussed by respondent with the administrative officer and the budget officer of the Bureau who both advised respondent against amendment of the letter of credit. Nevertheless the respondent consented thereto and wrote to the Philippine National Bank on August 7, 1957, requesting that an amendment be made in the letter of credit opened in favor of the corporation, to the effect that "presentation of bank guaranty and release certificate by the beneficiary may be accepted to effect payment owing to the alleged delay of the receipt of the pertinent documents by the bank supplier.

The *s.s. Waiwerang* with 732 head of cattle on board (one died on the high seas) arrived on the Port of Manila on August 8, 1957, in the morning. Dr. De Leon reported to respondent about two o'clock in the afternoon and informed him that only 191 head had been accepted by him. Thereupon respondent instructed his administrative officer to call up the Philippine National Bank to stop payment of the letter of credit, which was fallowed up by a letter the next morning. However, the bank said that the letter of credit was withdrawn on the afternoon of the previous day, August 7, and that payment had been made on the strength of the letter of amendment of

August 7, 1957, stating that "presentation of bank guaranty and release certificate may be accepted to effect payment."

Despite the information that only 191 head of cattle were accepted and that the remaining 541 rejected cattle were also on board the *s.s. Waiwerang,* respondent allowed the rejected cattle to be unloaded from the boat and brought to the quarantine station in Sisiman, Mariveles, at the expense of the Bureau of Animal Industry.

On August 12, 1957, respondent addressed a letter to the Manila Livestock Dealers Corporation for the refund of the amount of ₱185,054.15 representating the price of the rejected animals which it had collected under the letter of credit in alleged violation of the contract. The corporation rejected the demand on the ground that under the surrounding circumstances the Bureau had accepted the shipment in its entirety.

Food-and-mouth disease broke out among the animals on August 11, three days after their arrival at the Port of Manila and two days after their arrival at Sisiman. The disease was so devastating that by November 10, 1957, 361 of them had died, leaving only 371 alive. Many more died before the disease was put under control. By July 24, 1958, 402 had died. Of the 191 selected only 89 survived, and of the 541 rejected only 241 remain alive.

The amendment to the letter of credit enabled the Manila Livestock Dealers Corporation to collect in full of the entire shipment, inlcuding the rejected cattle.

Under the foregoing facts the Secretary of Agriculture and Natural Resources charged the respondent with (1) sending inexperienced government veterinarians to select the cattle in Indonesia; (2) allowing, without the approval of the Secretary of Agriculture and Natural Resources, a reduction of the guarantine period for the animals before shipment from three weeks to five days, thereby rendering it impossible to detect the presence of food-and mouth disease among the animals before shipment from Indonesia; (3) amending the letter of credit, thereby allowing full payment of the entire shipment of 733 head of cattle even before their arrival in the Philippines, without the approval of the Secretary of Agriculture and Natural Resources, and without prior verification whether the number of animals selected by the government veterinarians was as stipulated in the contract.

1. As regards the first count, respondent explains in effect that the two veterinairans sent by him had adequate technical qualifications. He entirely missed the point, as the charge refers to the assignment of men with no experience in buying breeder cattle abroad. However, I agree with the investigating committee that

the first count may be dropped, it appearing that the veterinarians properly implemented the provisions of the contract with reference to age requirements. And had not respondent reduced the quarantine period, they also would have enforced the provisions of the contract thereon.

2. The reduction of the period of quarantine was an amendment to the contract. Since the contract required the approval of the Secretary of Agriculture and Natural Resources, the amendment should have been with similar approval. Respondent effected the amendment without such approval. His claim that the Secretary of Agriculture and Natural Resources was then out of town on official business and that the matter involved was technical, anyway, is obviously untenable.

Foot-and-mouth disease broke out among the cattle on August 11, 1957, ten days after they left Indonesia on August 1, and three days after their arrival at the Port of Manila on August 8. Had the period of quarantine stipulated in the contract been observed and if the animals were infected in Indonesia before they were loaded on the boat, the disease would have broken out and would have been discovered before shipment because the animals would have been still in Indonesia on August 11, 1957. The reduction of the quarantine period from three weeks to five days prevented timely discovery.

Respondent's belief that the cattle might have been infected while on board by virus of foot-and-mouth disease that survived disinfection after previous shipments appears untenable: first, because his assumption of the presence on deck of crevices sufficient to protect the virus against disinfectant has no basis in the record; and secondly, the 191 head of cattle which were accepted were segregated from those rejected, and to accept respondent's theory is to admit the widespread presence of the virus on board at the time the 733 head of cattle were loaded. If there was really hidden virus in crevices on deck—although there is no proof of prior shipments' being infected with foot-and-mouth disease—because of the disinfection, the virus that survived it could have been found only in isolated places. The fact that both the accepted and the rejected cattle were later found to be infected shows that infection was widespread among them and consequently points to Indonesia as the source of the infection.

3. Contrary to respondent's contention, the amendment to the letter of credit was an amendment to, and not a mere implementation of, the contract, as the amendment did away with the requirement for the presentation of the documents specified in the contract and the

letter of credit before the letter of credit could be withdrawn and the stipulation in the contract that full payment could be effected only "upon safe arrival of every shipment in Manila." The contract was entered into with the approval of the Secretary of Agriculture and Natural Resources; hence, the amendment also required similar approval.

There is no merit in respondent's claim that the amendment to the domestic letter of credit was solely to facilitate unloading of the cattle. Circumstances abound indicating that when he authorized the amendment he knew that the same was to allow the Manila Livestock Dealers Corporation to collect the full value of the letter of credit. The amendment was requested precisely to facilitate payment which would be delayed without said amendment. In fact in his letter to the bank he requested that the domestic letter of credit be amended "to the effect that presentation of bank guaranty and release certificate by the beneficiary may be accepted *to effect payment.*" His immediate reaction was one of alarm when he was informed that only 191 out of the 733 head of cattle stipulated in the contract were accepted by Dr. De Leon, which betrays his pretension that he authorized amendment of the letter of credit merely to facilitate unloading. As will be recalled, he immediately instructed his administrative officer to ask the Philippine National Bank *to stop payment,* which he followed with a formal letter of the same tenor.

Similarly devoid of merit is his assumption that 733 head of cattle had been selected when he authorized amendment of the letter of credit. Drs. De Leon and Fernandez arrived in Indonesia on May 17, 1957, to select 733 head of cattle. By July 25, 1957, after more than two months, they had been able to select 130 head only, according to the certificates enclosed in Dr. De Leon's letter of that date which respondent received on August 1, 1957. If in two months the government veterinarians could select 130 only, respondent should have foreseen that within the short period of six days between the date of the letter and the departure of the boat on August 1, 1957, the odds were overwhelmingly against the possibility of the selection of the remaining 603 head to complete the 733 head stipulated in the contract.

4. Respondent claims that he could not possibly have ordered the suspension of the unloading of the animals on August 8, 1957, as he did not know the whole circumstances surrounding that shipment and that the best he could do was to allow the unloading of the animals

for quarantine. But he knew that except 191 head selected by the government veterinarians the rest of the shipment had been rejected. This alone should have been sufficient reason for him to take steps to prevent the unloading of the rejected animals. If he needed time to acquire full knowledge of the whole circumstances surrounding that shipment before making a decision, he could have secured that knowledge from Dr. De Leon. Considering that he was informed of the rejection of the entire shipment except 191 head at two o'clock in the afternoon and that it took many hours to unload the 541 head of rejected cattle, he could have prevented the unloading of the rejected cattle.

If it is true that he allowed the unloading of the rejected cattle for quarantine purposes only, it is strange that in his request for permission to unload the cattle he did not say so although he took pains to mention such details as the guard's overtime pay and others less important than the disposition of the rejected animals. Neither did he inform the Manila Livestock Dealers Corporation of the arrival of the rejected cattle and/or why they were unloaded despite their rejection. This omission gave the corporation a colorable ground for rejecting his subsequent demand for reimbursement of the overpayment and for contending that he had accepted the entire shipment of 732 head.

Respondent pleads good faith as a defense. Granting that he so acted, although his conduct with reference to the transaction is not absolutely free from suspicion, his good faith alone is obviously not sufficient to justify his acts and his negligence which have caused the Government enormous losses. Neither can he excuse himself by diverting attention to his subordinates' mistakes or contributory negligence. For maintenance alone of the rejected animals the Government had spent ₱95,025.60 up to July 24, 1958. Including the price paid for them, the total loss to the Government amounts to more than ₱280,000 as of said date. It is feared that the loss might run up to ₱400,000 by the time the question as to what to do with the survivors is finally settled.

In the light of the above, I find the respondent guilty of incompetence, inefficiency, gross negligence amounting to dereliction of duty, and conduct prejudicial to the best interest of the service.

WHEREFORE, Mr. Laureano S. Marquez is hereby considered resigned from office as Director of Animal Industry, effective as of the date of his preventive suspension.

Done in the City of Manila, this 31st day of August, in the year of Our Lord, nineteen hundred and fifty-nine, and of the Independence of the Philippines, the fourteenth.

CARLOS P. GARCIA
President of the Philippines

By the President:

ENRIQUE C. QUEMA
Assistant Executive Secretary

MALACAÑANG
RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 310

CONSIDERING MR. GAUDENCIO T. BOCOBO RESIGNED FROM OFFICE AS ASSISTANT FISCAL OF MANILA

This is an administrative case against Assistant Fiscal Gaudencio T. Bocobo of Manila for alleged guerrilla racket activities and bribery which was investigated by a special investigator of the Department of Justice. The bribery charge having been withdrawn by the complaint, only the other charge will be taken up here.

It appears that on June 16, 1953, Colonel Eugenio Castillo, overall commander of the 21st Infantry, ECLGA, submitted a guerrilla roster to Colonel Lorenzo Ador Dionisio, respondent's father-in-law, who was living with the fiscal. On December 10, 1953, and subsequent dates, Colonel Castillo submitted written requests for procurement allocations on behalf of different persons to Colonel Ador Dionisio, alleged chairman of the processing team. Similar applications were also submitted by Gaudencio Ventura and nine others.

From December 10, 1953, to January 10, 1954, Mrs. Catalina Ador Dionisio-Bocobo, Colonel Ador Dionisio's daughter and respondent's wife, received from guerrilla applicants sums of money totaling ₱1,430 as deposit to be applied in the payment of fees for the prosecution of claims for guerrilla recognition and the grant of the requested procurement allocations. Said payment was computed on the basis of ₱0.05 for every name included in the guerrilla roster and ₱3 for every ₱1,000 granted in the requested allocations. Each applicant executed a power of attorney in favor of the Rizal Investment Corporation, empowering it to collect whatever amount was due the applicant from the United States Government. At the same time each applicant and the Corporation

entered into an agreement for it to receive a contingent fee of 50% of whatever sum the applicant would receive from the United States Government. The applicants were assured that the money to be paid by said government would be deposited with the Bataan Trust Bank which would later issue bank booklets in their names containing their corresponding money allocations.

When months passed without the claimants' receiving the promised allocations from the United States Government or its agency, they got worried. They repeatedly repaired to respondent's house at 381 Dimasalang, Manila, and made inquiries from Colonel Ador Dionisio and Mrs. Bocobo who assured them that their money from the Federal Government was forthcoming.

This was a racket pure and simple to fraudulently obtain money from gullible persons on the misrepresentation that their guerrilla claims, meritorious or otherwise, would be favorably considered by the American Government. The filing of guerrilla recognition and procurement claims with the United State Government was closed on December 31, 1949. However, the applicants were induced to file their applications for recognition and allocation with Colonel Ador Dionisio after December 31, 1949. Although the time for filing procurement claims was later extended on June 28, 1954, that fact would not erase the apparent deceit committed as the claims in question had been filed prior to that date.

The Rizal Investment Corporation which supposedly transmitted to, and prosecuted in, the United States Court of Claims the applications for recognition and allocation was not empowered to act as such by its by-laws, and the Bataan Trust Bank, the supposed depositary of the money to be paid by the American Government, never acquired a legal existence. The contingent fee of 50% to the Rizal Investment Corporation was contrary to morals and public policy, and the collection of ₱0.05 for every name listed in the submitted guerrilla roster and ₱3 for every ₱1,000 granted in the requested allocations is not sanctioned by law.

Mrs. Catalina Bocobo at first tried to deny having received any money from the applicants, either for her personal account or as depositary, but when confronted with her signed receipts she admitted having received the money as depositary which she allegedly transmitted to her father, Colonel Lorenzo Ador Dionisio. The above claims filed by the applicants with the Rizal Investment Corporation, through Colonel Ador Dionisio do not appear in the certified list of all Philippine claims filed with the United States Court of Claims.

We now come to respondent's participation in the fraudulent scheme. On several occasions he was seen by government undercover men intimately talking with Mariano Flores in the office of the Rizal Investment Corporation at Jalandoni Building, of which corporation Flores is the President. He was also seen talking to Rustico Zapata, Flores' associate, at the Calvo Building, proposed site of the Bataan Trust Bank. Flores introduced respondent as the judge advocate general at a party held in Mandaluyong, Rizal, wherein discussions revolved around guerrilla claims. Respondent went to the headquarters of the 21st Infantry Regiment, ECLGA, and conferred with Colonel Eugenio Castillo, the over-all commander. He got the guerrilla roster on the representation that it would be submitted to the United States Army authorities for recognition purposes. After the applicants had talked with Flores of the Rizal Investment Corporation they brought their papers to the house of Fiscal Bocobo and presented them to Colonel Ador Dionisio and Mrs. Bocobo, sometimes in respondent's presence. The applicants paid their fees to respondent's wife at her house in the presence of Fiscal Bocobo at times. On one occasion he persuaded applicants to pay the required fees.

The foregoing shows not only knowledge on respondent's part of the existence of the fraudulent scheme but also his participation therein. Sworn to prosecute swindlers and other law violators, he allowed the use of his home for fleecing ignorant claimants in what appears to be a big-scale fraud.

WHEREFORE, Mr. Gaudencio T. Bocobo is hereby considered resigned from office as assistant fiscal of Manila, effective as of August 7, 1954, the date of his suspension, with prejudice to reinstatement in the government service. Let the records of the case be referred to the office of the City Fiscal of Manila for the filing of such criminal action against the persons concerned as may be warranted in the premises.

Done in the City of Manila, this 3rd day of September, in the year of Our Lord, nineteen hundred and fifty-nine, and of the Independence of the Philippines, the fourteenth.

CARLOS P. GARCIA
President of the Philippines

By the President:

ENRIQUE C. QUEMA
Assistant Executive Secretary

REPUBLIC ACTS

Enacted during the Fourth Congress of the Philippines
Second Session

H. No. 2277

[REPUBLIC ACT No. 2491]

AN ACT CHANGING THE NAME OF THE MONTALBAN ELEMENTARY SCHOOL IN THE MUNICIPALITY OF MONTALBAN, PROVINCE OF RIZAL, TO E. RODRIGUEZ, JR., ELEMENTARY SCHOOL.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The name of the Montalban Elementary School in the Municipality of Montalban, Province of Rizal, is changed to E. Rodriguez, Jr., Elementary School.

SEC. 2. This Act shall take effect upon its approval.

Enacted without Executive approval, June 21, 1959.

H. No. 2319

[REPUBLIC ACT No. 2492]

AN ACT CHANGING THE NAME OF SANTA ROSA ELEMENTARY SCHOOL IN THE MUNICIPALITY OF BAGO, PROVINCE OF ORIENTAL MINDORO, TO JULIO HERNANDEZ MEMORIAL SCHOOL.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The name of Santa Rosa Elementary School in the Municipality of Baco, Province of Oriental Mindoro, is hereby changed to Julio Hernandez Memorial School.

SEC. 2. This Act shall take effect upon its approval.

Enacted without Executive approval, June 21, 1959.

H. No. 2347

[REPUBLIC ACT No. 2493]

AN ACT CREATING THE BARRIO OF SAN GUILLERMO IN THE CITY OF LIPA

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The sitios of Sala and Pagolingling Bata in the City of Lipa are constituted into a distinct and independent barrio of said City to be known as the barrio of San Guillermo.

SEC. 2. This Act shall take effect upon its approval.

Enacted without Executive approval, June 21, 1959.

H. No. 2348

[REPUBLIC ACT No. 2494]

AN ACT CREATING THE BARRIO OF BULAKLAKAN IN THE CITY OF LIPA

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The sitios of Palaclacan, Latag and Bulalakao in the City of Lipa are separated from the barrio of Pinagtongulan, and are constituted into a distinct and independent barrio of said city to be known as the barrio of Bulaklakan.

SEC. 2. This Act shall take effect upon its approval.

Enacted without Executive approval, June 21, 1959.

H. No. 2349

[REPUBLIC ACT No. 2495]

AN ACT CREATING THE BARRIO OF MALITLIT IN THE CITY OF LIPA

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The sitio of Malitlit in the City of Lipa is converted into a barrio of said city to be known as the barrio of Malitlit.

SEC. 2. This Act shall take effect upon its approval.

Enacted without Executive approval, June 21, 1959.

H. No. 2358

[REPUBLIC ACT No. 2496]

AN ACT CREATING THE MUNICIPALITY OF MABINAY IN THE PROVINCE OF NEGROS ORIENTAL.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The sitios of Baliw, Landas, Langao, Abis, Himocdongon, Bato, Luyang Namangka, Tadlong, Lumbangan, Panyabonan, Tubod, Inapoy, Barras and Banban of Barrio Bagtic, Municipality of Bais, Province of Negros Oriental, are separated from said municipality and are constituted into a distinct and independent municipality to be known as the Municipality of Mabinay, Province of Negros Oriental.

SEC. 2. The seat of government shall be in the Mabinay proposed townsite in sitio Tadlong, or in any of the sitios therein which the municipal council by two-thirds vote may hereafter propose: *Provided,* That if the municipal council fails or omits to propose a different site within one year after the organization of the municipal government, the permanent site shall be the Mabinay proposed townsite:

Provided, further, That should the council propose a different site within the period stated, that site so proposed shall be he seat of the municipal government.

SEC. 3. The first mayor, vice-mayor and councilors of the new municipality shall be appointed by the President of the Philippines with the consent of the Commission on Appointments not earlier than he first of January, nineteen hundred and sixty, and shall hold office until their successors shall have been elected in the next general elections for provincial and municipal officials, and shall have been duly qualified.

SEC. 4. This Act shall take effect on January first, nineteen hundred and sixty.

Enacted without Executive approval, June 21, 1959.

H. No. 2361

[REPUBLIC ACT No. 2497]

AN ACT CREATING THE BARRIO OF LUCBAN IN THE MUNICIPALITY OF ABULUG, PROVINCE OF CAGAYAN.

Be it enacted by the Senate and Houes of Representatives of the Philippines in Congress assembled:

SECTION 1. The sitio of Lucban in the Municipality of Abulug, Province o fCagayan, is converted into a barrio of said municipality to be known as the barrio of Lucban.

SEC. 2. This Act shall take effect upon its approval.

Enacted without Executive approval, June 21, 1959.

H. No. 2410

[REPUBLIC ACT No. 2498]

AN ACT CREATING THE BARRIOS OF LUZ, LINANTUYAN AND HILAITAN IN THE MUNICIPALITY OF GUIHULNGAN, PROVINCE OF NEGROS ORIENTAL.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The following barrios are hereby created in the Municipality of Guihulngan, Province of Negros Oriental:

1. Barrio Luz, consisting of the sitios of Magbala-as (large), Cambalo, Dadiangao, Agbabakid, Banogbanog, Hinoba-an (small), Taluktok, Hinogpayan, Balingos, Kanapu-an, Mahilig, Takung and Bonbon;

2. Barrio Linantuyan, consisting of the sitios of Magbala-as (small), Aya (small), Magkilignit, Taloto, Hinoba-an (large), Gusa (small), Alamag and Salong; and

3. Barrio Hilaitan, consisting of the sitios of Marilao llaya, Kambulongnon, Busay, Danao, Manhantik, Tinagducan, Katawan, Mambug, Panlubiran and Himaya.

SEC. 2. This Act shall take effect upon its approval.

Enacted without executive approval, June 21, 1959.

H. No. 2443

[REPUBLIC ACT No. 2499]

AN ACT CREATING CERTAIN BARRIOS IN THE MUNICIPALITY OF PALOMPON, PROVINCE OF LEYTE.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The following sitios in the Municipality of Palompon, Province of Leyte, are converted into barrios thereof, as follows:

1. The sitio of Caduhaan to be known as the barrio of Caduhaan;

2. The sitio of Cambakbak to be known as the barrio of Cambakbak;

3. The sitio of San Guillermo to be known as the barrio of San Guillermo;

4. The sitio of Lu-uk to be known as the barrio of San Isidro;

5. The sitio of Lat-osan to be known as the barrio of Lat-osan;

6. The sitio of San Joaquin to be known as the barrio of San Joaquin; and

7. The sitio of Cangmuya to be known as the barrio of Cangmuya.

SEC. 2. This Act shall take effect upon its approval.

Enacted without Executive approval, June 21, 1959.

H. No. 2578

[REPUBLIC ACT No. 2500]

AN ACT TO CONVERT CERTAIN SITIOS OF THE MUNICIPALITY OF LOOC, PROVINCE OF ROMBLON, INTO BARRIOS.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The sitios of Calagonsao and Bonlao of Barrio Tugdan, the sitios of San Isidro (Icogan) and Comod-om of Barrio Alcantara, the sitios of Guinhaya-an, Manhac and Tuguis of Barrio Punta, and the sitios of Camandag and Balatucan of Barrio Buenavista, all in the Municipality of Looc, Province of Romblon, are converted into barrios of the same names.

SEC. 2. This Act shall take effect upon its approval.

Enacted without Executive approval, June 21, 1959.

H. No. 2589

[REPUBLIC ACT No. 2501]

AN ACT CHANGING THE NAMES OF THE CAPARAN PRIMARY SCHOOL AND DALAÑGIN PRIMARY SCHOOL IN THE MUNICIPALITY OF IPIL,

yet taking into account the explanation offered by plaintiff which was not controverted, aside from the conclusion We have already arrived at that defendant's motion should have been allowed, the Court *a quo* should not have dismissed the case on account of plaintiff's alleged failure to prosecute.

WHEREFORE, the orders appealed from are hereby set aside and the case remanded to the lower Court for further proceedings. Without pronouncement as to costs.

IT IS SO ORDERED.

Parás, C. J., Bengzon, Montemayor, Bautista Angelo, Labrador, Concepción, Reyes ,J. B. L., and *Endencia, JJ.,* concur.

Orders set aside.

H. No. 2860

[REPUBLIC ACT NO. 2504]

AN ACT CREATING CERTAIN BARRIOS IN THE PROVINCE OF SURIGAO

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The sitios of Bognan, Mone, Luha, Tumanan, Sta. Cruz, Sute, Tabon and Caguyao in the Municipality of Bislig, Province of Surigao, are converted into barrios of said municipality to be known as the barrios of Bognan, Mone, Luha, Tumanan, Sta. Cruz, Sute, Tabon and Caguyao, respectively.

SEC. 2. The sitios of Lahi, Hayangabon, Cagdianao, Cabugo and Sapa in the Municipality of Claver, same province, are converted into barrios of said municipality to be known as the barrios of Lahi, Hayangabon, Cagdianao, Cabugo and Sapa, respectively.

SEC. 3. The sitio of Balibadon in the Municipality of Cortes, same province, is converted into a barrio of said municipality to be known as the barrio of Balibadon.

SEC. 4. The sitios of Caman-onan, Lahi, Cambo-ayon and Aniboñgan in the Municipality of Gigaquit, same province, are converted into barrios of said municipality to be known as the barrios of Caman-onan, Lahi, Cambo-ayon and Aniboñgan, respectively.

SEC. 5. The sitios of Cambatong and Tagasaka in the Municipality of Hinatuan, same province, are converted into barrios of said municipality to be known as the barrios of Cambatong and Tagasaka, respectively.

SEC. 6. The sitios of Cabacuñgan, Unidad, Kinayan, Barobo, Anibuñgan, Diatagon, Javier, San Vicente, Amaga, Cangbagang and Bahi in the Municpality of Lianga, same province, are converted into barrios of said municipality to be known as the barrios of Cabacuñgan, Unidad, Kinayan, Barobo, Anibuñgan, Diatagon, Javier, San Vicente, Amaga, Cangbagang and Bahi, respectively.

SEC. 7. The sitio of Cabiton-an in the Municipality of Loreto, same province, is converted into a barrio of said municipality to be known as the barrio of Magsaysay.

SEC. 8. The sitios of San Jose, Dayano and Ombong in the Municipality of Mainit, same province, are converted into barrios of said municipality to be known as the barrios of San Jose, Dayano and Ombong, respectively.

SEC. 9. The sitios of Cagtenae, Cawayan, Hanagdong and Carihatag in the Municipality of Malimono, same province, are converted into barrios of said municipality to be known as the barrios of Cagtenae, Cayawan, Hanagdong and Carihatag, respectively.

SEC. 10. The sitio of Bito-on in the Municipality of Numancia, same province, is converted into a barrio of said municipality to be known as the barrio of Bito-on.

SEC. 11. The sitios of Garcia, Magsaysay and Coboy in the Municipailty of Sapao, same province, are converted into barrios of said municipality to be known as the barrios of Garcia, Magsaysay and San Juan, respectively.

SEC. 12. The sitios of Poctoy and Mayag in the Municipality of Surigao, same province, are converted into barrios of said municipality to be known as the barrios of Poctoy and Mayag, respectively.

SEC. 13. The sitios of Libas Gua, Barras, Layog, Jubang, Umbay, Carromata, Kinabigtasan, Bangsud, Ciagao, Maitum, Cayale, Bajao and Dayo-an in the Municipality of Tago, same province, are converted into barrios of said municipailty to be known as the barrios of Libas Gua, Barras, Layog, Jubang, Umbay, Carromata, Kinabigtasan, Bangsud, Ciagao, Maitum, Cayale, Bajao and Dayo-an, respectively.

SEC. 14. This Act shall take effect upon its approval.

Enacted without Executive approval, June 21, 1959.

H. No. 3127

[REPUBLIC ACT NO. 2505]

AN ACT CHANGING THE NAME OF THE MUNICIPALITY OF DARAGA, PROVINCE OF ALBAY, TO MUNICIPALITY OF LOCSIN.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The name of the Municipality of Daraga, Province of Albay, is changed to Municipality of Locsin.

SEC. 2. This Act shall take effect upon its approval.

Enacted without Executive approval, June 21, 1959.

H. No. 3364

[REPUBLIC ACT NO. 2506]

AN ACT CREATING THE BARRIO OF SANTA CRUZ IN THE MUNICIPALITY OF PUERTO PRINCESA, PROVINCE OF PALAWAN.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The sitios of Kalatubog and Kilometer 32 of Puerto Princesa North Road in the Municipality of Puerto Princesa, Province of Palawan, are constituted into a barrio of said municipality to be known as the barrio of Santa Cruz.

SEC. 2. This Act shall take effect upon its approval.

Enacted without Executive approval, June 21, 1959.

H. No. 2022

[REPUBLIC ACT NO. 2507]

AN ACT CREATING CERTAIN BARRIOS IN THE MUNICIPALITY OF LUPON, PROVINCE OF DAVAO.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The following sitios in the Municipality of Lupon, Province of Davao, are converted into barrios of said municipality to be known as follows:

Sitio Cuabo to Barrio Cuabo;
Sitio San Roque to Barrio San Roque;
Sitio Crossing Manikling to Barrio Crossing Manikling;
Sitio Dogmanon to Barrio Dogmanon;
Sitio Eva to Barrio Eva;
Sitio Kabangkalan to Barrio Kabangkalan;
Sitio Magsaysay to Barrio Magsaysay;
Sitio San Jose to Barrio San Jose;
Sitio Kauswagon to Barrio Kauswagon;
Sitio Kalubihan to Barrio Kalubihan;
Sitio Mugbongcugon to Barrio Mugbongcugon;
Sitio Kabaddiangan to Barrio Kabaddiangan;
Sitio Kalapagan to Barrio Kalapagan;
Sitio San Vicente to Barrio San Vicente;
Sitio Maragatas to Barrio Maragatas; and
Sitio Mahayag to Barrio Mahayag.

SEC. 2. This Act shall take effect upon its approal.

Enacted without Executive approval, June 21, 1959.

H. No. 2755

[REPUBLIC ACT NO. 2508]

AN ACT CHANGING THE NAME OF THE SANTO DOMINGO HIGH SCHOOL IN THE MUNICIPALITY OF SANTO DOMINGO, PROVINCE OF NUEVA ECIJA, TO JULIA ORTIZ LUIS HIGH SCHOOL.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The name of the Santo Domingo High School in the Municipality of Santo Domingo, Province of Nueva Ecija, is changed to Julia Ortiz Luis High School.

SEC. 2. This Act shall take effect upon its approval.

Enacted without Executive approval, June 21, 1959.

H. No. 1081

[REPUBLIC ACT NO. 2509]

AN ACT CREATING THE MUNICIPALITY OF AMPATUAN, PROVINCE OF COTABATO

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The barrios of Decaluñgan, Esperanza, Kauran, Manibba (Banaba), Matiompong, Kalandagan, Kayakaya, Upper Mao, Lower Mao, Guinibon, Makaubas, Buluan, Kamasi, Sampao, Upper Kakal, Lower Kakal, Tuka, Maganoy, Kaliawa, Malatimon, Kapimpilan, Laguinding and Timbangan, Municipality of Datu Piang, Province of Cotabato, are separated from said municipality, and are constituted into a district and independent municipality to be known as the Municipality of Ampatuan,

Province of Cotabato, with the seat of government at the present site of the barrio of Decaluñgan, and the boundary of this new municipality shall be more definitely defined as follows:

"Beginning at Cabuban Bridge, on the Cotabato-Dalican-Allah Road, going due west to a point on the boundary line of the municipalities of Dinaig and Upi; thence going on a southwesterly direction following the boundary line of Dinaig and Upi to a point where the boundary lines of the municipalities of Lebak, Upi, Datu Piang and Dinaig meet; thence going on a southeasterly direction following the boundary line of the municipalities of Lebak and Datu Piang to a point where the boundary lines of the municipalities of Lebak, Datu Piang and Isulan meet; thence going due east following the boundary line of the municipalities of Datu Piang and Isulan to Allah Bridge, on the Cotabato-Dalican-Allah Road; thence going on a northeasterly direction following the course of the Allah River downstream to the junction of the Allah and Kapingkong Rivers, thence going on a northwesterly direction following the Allah River downstream to the junction of the Allah and Cabulnan Rivers; thence going on a southwesterly direction following the course of the Cabulnan River upstream to Cabulnan Bridge on the Cotabato-Dalican-Allah Road, the point of beginning."

SEC. 2. The first mayor, vice-mayor, and councilors of the new municipality shall be appointed by the President, with the consent of the Commission on Appointments, and shall hold office until their successors shall have been elected in the next general elections for local officials and shall have qualified.

SEC. 3. This Act shall take effect upon its approval.

Enacted without Executive approval, June 21, 1959.

H. No. 1219

[REPUBLIC ACT NO. 2510]

AN ACT CREATING THE MUNICIPALITY OF SALUG, PROVINCE OF ZAMBOANGA DEL NORTE

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The barrios of Salug, Mucas, Libertad, Tambalang, Balacan, Danao, Caracol, Canawan, Bacong, Lipakan, and Palandok in the Municipality of Liloy, Province of Zamboanga del Norte, are separated from said municipality, and are constituted into a distinct and independent municipality to be known as the Municipality of Salug, same province, with the seat of government located at the site of the present barrio of Mucas.

SEC. 2. The first mayor, vice-mayor, and councilors of the new municipality shall be appointed by the President, with the consent of the Commission on Appointments, and shall hold office until their successors shall have

been elected in the next general elections for local officials and shall have qualified.

SEC. 3. This Act shall take effect upon its approval.

Enacted without Executive approval, June 21, 1959.

H. No. 1395

[REPUBLIC ACT NO. 2511]

AN ACT FIXING THE BOUNDARY LINE BETWEEN THE MUNICIPALITIES OF ALLEN AND SAN ISIDRO PROVINCE OF SAMAR.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The boundary line between the municipalities of Allen and San Isidro, Province of Samar, shall be the center of the Mawo River up to the intersection of Mawo River and Igot River (San Ramon Creek), and from the center of the mouth of Igot River to the intersection of Igot River and Binalabag Creek which runs eastward up to the boundary of the Municipality of San Jose.

SEC. 2. The Municipality of San Isidro shall include the barrios of San Ramon, Erenas, San Juan, Palanit, Veriato, Acedillo, Tangolan, Buenavista, Among, Happy Valley, Caaguit-itan, Corocolab-og and Caglanipao.

SEC. 3. This Act shall take effect upon its approval.

Enacted without Executive approval, June 21, 1959.

H. No. 1979

[REPUBLIC ACT NO. 2512]

AN ACT TRANSFERRING THE SEAT OF GOVERNMENT OF TALUKSANGAY DISTRICT, CITY OF ZAMBOANGA, TO PASILMANTA, SAKOL ISLAND.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The seat of government of Taluksangay District, City of Zamboanga, is hereby transferred from Taluksangay proper to Pasilmanta, Sakol Island.

SEC. 2. This Act shall take effect upon its approval.

Enacted without Executive approval, June 21, 1959.

H. No. 1579

[REPUBLIC ACT NO. 2513]

AN ACT DEFINING THE BOUNDARY BETWEEN THE MUNICIPALITIES OF POLILLO AND BURDEOS, PROVINCE OF QUEZON.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The barrio of Kaniwan situated between the municipalities of Polillo and Burdeos, Province of Quezon,

is hereby included in the Municipality of Burdeos, making Pilion River as the boundary between the aforesaid municipalities.

SEC. 2. This Act shall take effect upon its approval.

Enacted without Executive approval, June 21, 1959.

H. No. 3190

[REPUBLIC ACT No. 2514]

AN ACT CREATING THE MUNICIPALITY OF BANSUD IN THE PROVINCE OF ORIENTAL MINDORO.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The barrios of Tiguisan I, Alcadesma, Salcedo, Rosacara, Villa-Pagasa, Putput, New Bansud, Old Bansud, Conrazon Lancauan and Sumagui are separated from the Municipality of Boñgabon, Province of Oriental Mindoro, and are constituted into a distinct and independent municipality to be known as the Municipality of Bansud, same province, with the seat of government to be located at the site of the present barrio of New Bansud.

SEC. 2. The first mayor, vice-mayor and councilors of the new municipality shall be appointed by the President, with the consent of the Commission on Appointments, and shall hold office until their successors shall have been elected in the next general elections for local officials and shall have qualified.

SEC. 3. This Act shall take effect upon its approval.

Enacted without Executive approval, June 21, 1959.

H. No. 3205

[REPUBLIC ACT No. 2515]

AN ACT TO AMEND SECTION ONE OF REPUBLIC ACT NUMBERED NINETEEN HUNDRED SEVENTY-TWO.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Section one of Republic Act Numbered Nineteen hundred seventy-two is amended to read as follow:

"SECTION 1. The barrios of Ibung and Bintawan, Municipality of Solano, Province of Nueva Vizcaya, are separated from said municipality and are constituted into a distinct and independent municipality to be known as the Municipality of Villa Verde, Province of Nueva Vizcaya, with the seat of government at the site of the present barrio of Bintawan: *Provided, however,* That within a year from approval hereof, by a vote of two-thirds of all the members of the municipal council elected in the general elections of nineteen hundred and fifty-nine for local officials, such seat of government may be transferred to any other site."

SEC. 2. This Act shall take effect upon its approval.

Enacted without Executive approval, June 21, 1959.

H. No. 1319

[REPUBLIC ACT NO. 2516]

AN ACT TO ESTABLISH A NATIONAL AGRICULTURAL HIGH SCHOOL IN THE MUNICIPALITY OF SALCEDO, PROVINCE OF SAMAR, TO BE KNOWN AS THE SOUTHERN SAMAR NATIONAL AGRICULTURAL SCHOOL, AND TO AUTHORIZE THE APPROPRIATION OF FUNDS THEREFOR.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. There shall be established, under the direct supervision of the Director of Public Schools, a national agricultural school in the Municipality of Salcedo, Province of Samar, at a suitable site to be selected by said Director, to be known as the Southern Samar National Agricultural School.

SEC. 2. Upon the recommendation of the Director of Public Schools, the President shall set aside and reserve such portion of the public lands located in the Municipality of Salcedo of said province, as may be necessary and convenient for the establishment of the said school and of its farm site.

SEC. 3. The sum of two hundred thousand pesos is hereby authorized to be appropriated, out of any funds in the National Treasury not otherwise appropriated, for the establishment, operation and maintenance of the said school during the fiscal year ending June thirty, nineteen hundred sixty. Such sums as may be necessary for its operation and maintenance in subsequent years shall be included in the annual General Appropriation Acts.

SEC. 4. This Act shall take effect upon the date the funds authorized herein to be appropriated shall have been provided for.

Enacted without Executive approval, June 21, 1959.

H. No. 1402

[REPUBLIC ACT NO. 2517]

AN ACT CREATING THE MUNICIPALITY OF BUNAWAN, PROVINCE OF AGUSAN

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The municipal districts of Mambalili, Bunawan, Libertad, Basa, Tudela, San Isidro, Santa Maria, Trento, Cuevas and San Salvacion, together with the villages of San Marcos and San Ignacio in the Province of Agusan are constituted into a distinct and independent municipality to be known as the Municipality of Bunawan, with the seat of government at the present site of the Municipal District of Bunawan. The said municipality

shall be bounded in the North by Mandawiton and Mambogoñgon lakes and the Municipality of San Francisco, on the East by the Municipality of San Francisco and the Province of Surigao, on the South by the Province of Davao, and on the West by the municipal districts of Veruela, Sta. Josefa, Patrocinio and the village of San Gabriel.

SEC. 2. The first mayor, vice-mayor and councilors of the new municipality shall be appointed by the President, with the consent of the Commission on Appointments, and shall hold office until their successors shall have been elected in the next general elections for local officials and shall have qualified.

SEC. 3. This Act shall take effect upon its approval.

Enacted without Executive approval, June 21, 1959.

H. No. 1631

[REPUBLIC ACT No. 2518]

AN ACT CREATING THE MUNICIPALITY OF SAN FRANCISCO, PROVINCE OF AGUSAN

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The municipal districts of Borbon, Ebro, Novele, Cabawan, Rosario, Alegria, Cabantao and San Francisco in the Province of Agusan are constituted into a distinct and independent municipality to be known as the Municipality of San Francisco, same province. The seat of government shall be located at the site of the present Municipal District of San Francisco.

SEC. 2. The first mayor, vice-mayor and councilors of the new municipality shall be appointed by the President, with the consent of the Commission on Appointments, and shall hold office until their successors shall have been elected in the next general elections for local officials and shall have qualified.

SEC. 3. This Act shall take effect upon its approval.

Enacted without Executive approval, June 21, 1959.

H. No. 2541

[REPUBLIC ACT No. 2519]

AN ACT CREATING THE MUNICIPALITY OF SAGUDAY IN THE PROVINCE OF NUEVA VIZCAYA

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The barrios of Saguday, La Paz, Salvacion and Sto. Tomas are separated from the Municipality of Diffun, and the barrios of Dibol, Tres Reyes and Mangandingay are separated from the Municipality of Aglipay, all in the Province of Nueva Vizcaya, and constituted into a new and separate municipality of said province

to be known as the Municipality of Saguday, with the seat of government at the present site of the barrio of Saguday.

SEC. 2. The first mayor, vice-mayor and councilors of the new municipality shall be appointed by the President of the Philippines with the consent of the Commission on Appointments, and shall hold office until their successors shall have been elected and shall have qualified.

SEC. 3. This Act shall take effect upon its approval.

Enacted without Executive approval, June 21, 1959.

H. No. 554

[REPUBLIC ACT No. 2520]

AN ACT CHANGING THE NAME OF THE MUNICIPALITY OF LIBOG, PROVINCE OF ALBAY, TO MUNICIPALITY OF STO. DOMINGO.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The Municipality of Libog, Province of Albay, shall hereafter be known as the Municipality of Sto. Domingo.

SEC. 2. This Act shall take effect upon its approval.

Enacted without Executive approval, June 21, 1959.

DEPARTMENT AND BUREAU ADMINISTRATIVE ORDERS AND REGULATIONS

Executive Office

CIVIL SERVICE COMMISSION

BOARD OF EXAMINERS FOR CUSTOMS BROKERS

RULES AND REGULATIONS OF THE BOARD OF EXAMINERS FOR CUSTOMS BROKERS

Pursuant to the provision of Section 3409 of Republic Act No. 1937, otherwise known as the Tariff and Customs Code of the Philippines, the following rules and regulations for the practice of customs brokerage in any Port of Entry in the Philippines are hereby promulgated:

PART I

ORGANIZATION OF THE BOARD

RULE 1. *Composition of the Board and Qualifications of Members.*—The Board of Examiners for Customs Brokers shall be composed of the Commissioner of Customs, as ex-officio chairman and two members who shall be appointed by the President upon the recommendation of the Commissioner of Civil Service. The two members of the Board shall be holders of customs broker's certificate and shall hold office for a term of two years: *Provided,* That the first members shall hold office for the following terms: one member for one year, and the second member for two years. Vacancies in the Board shall be filled for the unexpired term.

RULE 2. *Duties of Chairman.*—The Chairman shall preside at all meetings and sign all official documents, letters and correspondence involving important matters and policies of the Board including summons, *subpoena* or *subpoena duces tecum.* In case of temporary incapacity or absence of the Chairman, the senior Member shall act for and in the absence of the Chairman. It shall be the duty of the Members of the Board to attend all meetings of the Board particularly when the purpose of such meeting is to deliberate on the results of examinations or on questions involving important policies of the Board.

RULE 3. *Duties of the Secretary.*—The Secretary shall be the custodian of all the records of the Board, including examination and other confidential papers. He shall prepare and answer correspondence on routine matters or by authority of the Board shall attest all minutes of meetings, resolutions of the Board as well as certificates and other documents signed by the Board. He shall also keep a complete file of the records of the activities and proceedings of the Board and shall perform such other duties which he may be authorized by law to do in common with the other Examining Boards.

RULE 4. *Meetings.*—Regular meetings shall be held for conducting administrative investigations and for transacting official business at the call of the Chairman. Special meetings may be held as often as may be necessary in the discretion of the Chairman or at the request of the Secretary or majority members of the Board.

RULE 5. *Quorum.*—All members shall attend the meetings of the Board, except for unavoidable circumstance, in which case two members of the Board may be sufficient to constitute a quorum for the transaction of official business.

PART II

APPLICATION AND EXAMINATION

RULE 6. *Form of Applications.*—All applications for examination and registration must be properly executed in handwriting of the applicant on B. E. C. S. Form No. 1 and must be filed with the Secretary of the Board of Examiners at least 10 days before the scheduled date of examination. Every application must be accompanied by a recent photograph (2 × 2½ inches in size) of the applicant and the prescribed fee.

RULE 7. *Approval of Applications.*—At least two members of the Board shall go over the applications. The Board shall satisfy itself that each applicant possesses the qualifications prescribed by law and rules and regulations promulgated by the Board.

RULE 8. *Examination fee.*—Each applicant for examination shall pay a fee of fifty pesos (₱50.00) direct to the Bureau of Civil Service.

RULE 9. *Date and Place of Examination.*—The examination for Customs Brokers shall be given once every 2 years by the Board in the City of Manila, or as often as the need therefor arises which fact shall be certified by the Commissioner of Customs to the Bureau of Civil Service and the Board shall act accordingly.

RULE 10. *Subjects of Examination.*—All examinations shall be given in English. Applicants shall be examined in the following subjects:

(*a*) Tariffs (Assessment and classification of merchandise including administrative provisions) 40%

(*b*) Customs (Marine, Law, Surveyor of the Port, Liquidation, Warehousing, and other laws enforced by the Bureau of Customs	40%
(*c*) Customs procedures a ndpractices	20%
Total	100%

RULE 11. *Ratings required.*—A general average of seventy-five per cent (75%) shall be the passing grade for this examination: *Provided,* That the examinee shall not have obtained a grade of less than sixty per cent (60%) in any of the examination subjects.

RULE 12. *Qualifications for Examination for Customs Brokers.*—In order to be admitted to the Customs broker examination, an applicant must, at the time of filing his application therefor, establish to the satisfaction of the Board that he has the following qualifications:

1. At least 25 years of age;
2. A citizen of the Philippines;
3. Of good moral character;
4. Has never been convicted of a crime involving moral turpitude; and
5. Has completed a four-year collegiate course with at least two years experience in customs and tariff matters; an applicant who has only completed two years in college may be allowed to take the examination provided that each year lacking in college shall be substituted by two years of actual experience in customs brokerage and/or customs and tariff matters; *Provided,* That said experience shall be duly certified by the employer or employers of the applicant under oath.

RULE 13. *Prohibited acts during examination.*—Candidates are prohibited from communicating with each other while the examination is in progress by means of words, gestures, codes or other acts which may enable them to exchange information. Any candidate violating this rule shall be summarily expelled from the examination room and his papers cancelled.

RULE 14. *Preparation of original questionnaires and printing of the same.*—Unless another arrangement is agreed upon, examination questions shall be prepared by the Board members jointly and shall be kept strictly CONFIDENTIAL. The original copy of the questionnaire must be in the handwriting of the Board member or members and shall be ready for printing on the day of the examination. The original questionnaires shall be brought by the Board member or members to the place of examination. The members giving the examination must be present during the printing of the questions.

The original copy of the questions shall be turned over to the Secretary of the Board immediately after the examination for purposes of records. A permanent file of these questions shall be kept and treated as confidential matter.

RULE 15. *Guides in preparing questions.*—In preparing the questions, the time allowed in a given subject should be determined with due regard to the degree of difficulty of the questions given and the time allowed for answering the entire questionnaires in a given subject must be stated in the questionnaire.

RULE 16. *Explaining question.*—Board members shall refrain from explaining questions to a particular candidate. If any explanation is necessary, the same must be given to the entire group of candidates in the examination room.

RULE 17. *Irregularity in examination papers.*—If in rating the papers a Board member finds any irregularity in any examination paper, he shall refrain from rating the same and shall immediately report said irregularity to the Secretary of the Board for appropriate action.

RULE 18. *Rating of papers.*—Answers to every questions must be rated by at least two members of the Board, the first corrector consistently using blue pencil and the second, red pencil. Answers to each question should be rated on the basis of 100 per cent and the rating given to each question should be clearly written on the examination paper. In case the rating given by a Board member to an answer differs by more than 10 per cent from that given by the second corrector, they shall adjust their ratings so that the difference should not be more than 10 per cent. In order to pass the examination, a candidate must obtain a general weighted average of at least seventy-five per cent (75%), without obtaining a grade of less than sixty per cent in any subject.

RULE 19. *Authentication of ratings.*—Each paper shall be authenticated by the initials of the Board members who rated it, at the upper right end corner of the questionnaire attached to the paper.

RULE 20. *Alteration of ratings.*—If it is desired to change a rating given, the same shall be crossed out, and the revised rating shall be indicated above the altered rating and initiated by the Board member making the change.

RULE 21. *Report of ratings.*—The Board of Examiners for Customs Brokers shall, within 120 days after the date of completion of the examination, report the rating obtained by each candidate to the Commissioner of Civil Service, who shall submit such ratings to the President for release.

RULE 22. *Release of results.*—Board members shall not release any information about the results of the examination while the same is under consideration. No Board member shall inform a candidate of his rating or standing in the examination before the official release of the results thereof.

RULE 23. *Reconsideration of ratings.*—After the results of a given examination are approved and the names of candidates revealed, no petition for reconsideration of grades shall be granted, except on grounds of clerical or mechanical errors, or when

it is conclusively shown that there has been abuse of discretion on the part of the examiner or examiners in rating the paper.

RULE 24. *Privileges of successful candidates.*—Henceforth, a customs brokers' examination shall be considered as equivalent to the first grade regular examination given by the Bureau of Civil Service for purposes of appointment to positions in the classified service the duties of which involve knowledge of customs and tariff matters. He may, if he desires, be entitled to establish a customs brokerage business at any port in the Philippines, and in doing so shall apply for a license from the Collector of Customs of the Port concerned.

PART III

REGISTRATION, LICENSING AND SUSPENSION OF CUSTOMS BROKERS' CERTIFICATES

RULE 25. *Person entitled to the issuance of Customs Brokers' Certificates.*—A candidate who has passed the customs brokers' examination including those given prior to the effectivity of Republic Act No. 1937 shall be entitled to the issuance of a certificate as a customs broker, and also those practising customs brokers if they so desire upon payment of the prescribed fee. However, by express provision of Republic Act No. 1937, those who qualified as customs brokers in accordance with customs regulations existing before the enactment of Republic Act No. 1937, and members of the Technical Staffs of the respective Committees of Congress that reported Republic Act No. 1937 who desire to have a certificate issued to them may apply for the issuance of such certificates although as hoders of such certificates they are not considered as regular first grade civil service eligibles as provided in the preceding rule. No certificate as Customs Brokers shall be granted to any person who has been convicted of a crime involving moral turpitude.

RULE 26. *Registration fee.*—The fee for the issuance of a customs brokers' certificate is fifty pesos (₱50.00). The certificate shall show among other things, the full name of the registrant, shall have a serial number and shall be signed by all the members of the Board and the Commissioner of Civil Service, and shall bear the official seal of the Board. A roster of quaified customs brokers who have been issued certificates shall be kept by the Secretary of the Board.

RULE 27. *Duplicate certificate.*—A duplicate certificate of registration shall be issued by the Board to an applicant upon presentation of an affidavit or other satisfactory evidence showing that the original certificate is lost or destroyed and upon payment of the statutory fee of fifty pesos (₱50.00). The petition for the issuance of a duplicate certificate shall state fully the circumstances surrounding the loss or destruction of the original certificate.

RULE 28. *Annual registration.*—Every qualified customs broker practising the profession shall register annually with the Secretary of the Board of Examiners on the form prescribed every January of the incoming year and shall pay the annual registration fee of two pesos (₱2.00).

RULE 29. *Special requirements.*—Concerning those persons who qualified as customs brokers in accordance with customs regulations existing before the enactment of Republic Act No. 1937, each shall submit the following document:

> A certificate, duly authenticated by the Commissioner of Customs, that he qualified as Customs Broker in accordance with customs regulations existing before the enactment of Republic Act No. 1937.

As to those members of the Technical Staffs of the respective Committee of Congress that reported Republic Act No. 1937, who desire to have a certificate issued to them, each shall also submit the following document:

> A certified true copy of his appointment that he was a member of either the Ways and Means Committee of the House or Senate Finance Committee, as the case may be, duly signed by the respective Secretary of both Houses.

RULE 30. *Licensing of Customs Brokers.*—Any duly registered Customs Broker desiring to establish and operate a customs brokerage business at any port of entry in the Philippines shall apply for a license to the Collector of Customs of the port concerned. Customs brokerage firms, whether sole proprietorship, corporation, association or partnership shall engage only in one port of entry in the Philippines. A licensed customs broker shall not work in or represent more than one brokerage firm, corporation, association or partnership.

RULE 31. *License fee.*—No such license shall be issued unless the applicant who has duly registered pay the required license fee of Fifty Pesos (₱50.00) to the Collector of Customs of the Port concerned.

RULE 32. *Filing of Bonds required.*—Aside from the payment of Fifty Pesos (₱50.00) as license fee, the prospective Customs Broker shall file the required bonds for customs brokers. Whenever it shall appear that a bond given by a customs broker is inadequate, the Collector shall require additional or substitute bond to be filed. Such additional or substitute bond shall be furnished by the Broker within 10 days after demand, otherwise, his permit shall be suspended or revoked as circumstances may warrant. The bonds posted by the customs broker may be personal bonds guaranteed by at least 2 sureties satisfactory to the Collector of Customs of the Port or a surety bond posted by a duly licensed surety company.

RULE 33. *The two-broker requirements.*—No corporation, association or partnership shall engage in

the customs brokerage business in any port of entry in the Philippines unless at least two of the officers of such corporation or association, or at least two of the members of such partnership have such customs broker certificate.

RULE 34. *Prohibition against practice by an unlicensed person.*—No person shall transact business as customhouse broker without a license granted in accordance with the laws, rules and regulations provided herein. Any person discharging the work of a customs broker who is not licensed as such shall be prosecuted in accordance with law.

RULE 35. *Prior licenses.*—Licenses issued under the provisions of the customs laws, rules and regulations prior to the effectivity of Republic Act No. 1937, shall continue to be in force and effect, subject to suspension and revocation as provided herein.

RULE 36. *Causes of revocation or suspension of Certificate.*—A certificate may be suspended or revoked for the following causes:

(*a*) For continued neglect of duty or incompetency;

(*b*) For being disreputable, or for refusing to comply with the rules and regulations of the Board of Examiners for Customs Brokers; or

(*c*) For having willfully and knowingly deceived, misled with intent to defraud, or threatened any importer, exporter, claimant or client, by work, circular, letter or by advertisement; and

(*d*) For violating the Code of Ethics appended hereto which is made a part hereof.

PART IV

CONDUCT OF INVESTIGATION

RULE 37. *Form of complaint.*—A complaint for any cause or causes as provided by Republic Act No. 1937, shall be in writing and under oath or may be in any form unless the Board, in its discretion directs otherwise.

RULE 38. *Who may file a complaint.*—Any person or persons, firm or corporation through its duly authorized representative, may file the complaint.

RULE 39. *Contents.*—The complaint shall set forth clearly the charge or charges complained of, supported by affidavits or any other material evidence, if any.

RULE 40. *Copies.*—All complaints shall be filed in quadruplicate with the Secretary of the Boards of Examiners, who shall number the same in consecutive order of their receipt. These numbers shall be known as Administrative Case Numbers.

RULE 41. *Withdrawals.*—Any complaint may be withdrawn by the complainant in writing and under oath. The Board shall forthwith dismiss the case unless in the interest of the public and for the safeguard of the ethics and standards of the profession, the Board shall deem it necessary to prosecute the case notwithstanding the withdrawal by the complainant.

RULE 42. *Service and answer.*—If the Board believes there is a *prima facie* case, a copy of the complaint shall be served upon the respondent in person or by registered mail, who shall be required to answer the same within 10 days from receipt thereof. The answer shall be in writing and in quadruplicate. However, if in the opinion of the Board the complaint lack merit, the same shall be dismissed and the complainant shall be duly notified of such action of the Board, without prejudice, however, to the filing of another complaint based on the same cause of action as may be warranted.

RULE 43. *Time of hearing.*—The Board shall set the case for hearing not later than 10 days after receipt of the answer of the respondent customs broker to the charges preferred in the complaint, or upon unexplained failure of the respondent to answer within the time granted him.

RULE 44. *Rights of respondent during the hearing.*—The respondent shall be given full opportunity to defend himself, to testify as witness or to produce witnesses in his behalf, or to be heard by himself or counsel. However, if upon reasonable notice not exceeding 10 days, the respondent fails to appear without cause satisfactory to the Board, the hearing shall proceed *ex parte*.

RULE 45. *Members present.*—Administrative investigation shall be conducted by at least two members of the Board, assisted by the Secretary or his authorized assistant.

RULE 46. *Order of hearing.*—Unless for special reasons, the Board directs otherwise, the order of the hearing shall be as follows:

(*a*) The complainant must produce evidence on his part in support of the charges preferred against the respondent.

(*b*) The respondent shall then offer evidence in support of his defense. Counsels may be heard from each side in the order herein prescribed, but in any event, the complainant is entitled to the opening and closing examination.

RULE 47. *Postponement.*—Postponement of the hearing of a case shall be granted to either complainant or respondent not more than two times and in any case, not exceeding 2 months, except when there are special circumstances or justifiable reasons which, in the opinion of the Board, warrant the grant of the request of either complainant or respondent for further postponement. If the complainant requests more than two postponements or more than 2 months after the case has been set for hearing, the complaint shall be automatically dismissed. If the respondent requests more than 2 postponements or more than 2 months postponements he shall be considered in default and the Board shall thereupon proceed to hear the testimony of the complaint and his witnesses, if any, and shall

render its decision in accordance with the facts alleged and proved.

RULE 48. *Evidence.*—The rules of evidence shall be substantially followed in the reception of evidence, but technical errors in the admission of evidence which do not prejudice substantial rights of any of the parties shall not vitiate the proceedings.

RULE 49. *Memorandum.*—The Board may in its discretion, require the complainant or respondent, or both, through their counsels, if any, to submit a memorandum in support of their respective sides as may be warranted by the situation with respect to their arguments relative to the facts in issue.

RULE 50. *Form of findings and recommendations.*—The Board shall transmit all papers including transcript of stenographic notes to the Commissioner of Civil Service with written findings and recommendation and approved by at least two members of the Board, attested by the Secretary for his decision.

RULE 51. *Contents of decision.*—The decision shall contain clearly findings of facts and law on which it is based. If the complaint is based on breach of rules and regulations, or of the ethics of the profession, the same shall also be stated in the decision.

RULE 52. *Petition for reconsideration.*—Petition for reconsideration or for re-hearing shall be filed with the Commissioner of Civil Service within 15 days after receipt of decision. Petition filed after this period shall not be entertained and shall be considered as filed without action unless the Commissioner, for special reasons which must be stated in his decision, decide to act on the petition.

RULE 53. *Grounds for reconsideration.*—No petition for reconsideration shall be entertained unless it be for the following cause or causes:

1. The decision is not in conformity with the evidence and/or facts presented.

2. Newly discovered evidence or facts which could not, with reasonable diligence, be discovered and produced at the hearing, and which when presented would probably alter the result of the investigation.

RULE 54. *Appeal.*—The respondent customs broker may appeal from the decision of the Commissioner of Civil Service to the President of the Philippines within 30 days after receipt of decision. The appeal shall be taken by filing a written petition praying that the decision be modified or set aside in whole or in part. A copy of the petition shall be serve to the Commissioner of Civil Service who shall immediately forward all the papers bearing on the case to the President of the Philippines whose decision shall be final.

PART V

ROSTERS OF CUSTOMS BROKERS

RULE 55. *Practising Customs Brokers.*—At each port of entry, where there are licensed customs brokers engaged in the customs brokerage business, the Collector of Customs thereat shall submit to the Board in January of every year a list of customs brokers engaged in customs brokerage.

RULE 56. *Copies of roster.*—A roster showing the names and addresses of the registered customs brokers shall be prepared by the Commissioner of Civil Service during the month of July of every year. Copies of this roster shall be mailed to each person so registered and placed on file with the Office of the President of the Philippines, and to such other bureaus, government agencies and provincial and municipal authorities as may be deemed necessary, and to the public upon request.

RULE 57. *Effectivity.*—These rules and regulations shall take effect upon approval by the Commissioner of Civil Service.

Adopted and recommended by the Board of Examiners for Customs Brokers at Manila, Philippines, this 15th day of April, 1958.

ELEUTERIO CAPAPAS
Chairman

PROTASIO CAÑALITA
Member

GREGORIO S. MIRANDA
Member

Attest:

A. L. BUENAVENTURA
Acting Secretary

Approved:

A. DEL ROSARIO
Commissioner of Civil Service

* * *

CODE OF ETHICS FOR CUSTOMS BROKERS

1. Honesty, trustworthiness, efficiency and fair dealing shall be the working guide of a customs broker in the conduct of his business.

2. Public service rather than individual interest shall be the paramount concern of every broker.

3. No broker shall indulge in unfair and ruinous competition, or shall emply deceitful devices or means to attract customers.

4. Soliciting customers already connected with other brokers, or discrediting fellow brokers for selfish motives or otherwise is unethical.

5. A customs broker shall hold inviolate the trust and confidence reposed in him by his client especially in the matter of funds, papers, and goods entrusted to his care.

6. In his dealing with the Government, a customs broker shall conduct himself properly and beyond reproach. Concealing facts and/or conniving with clients to suppress facts essential in the proper collection of government revenues, or inducing importers or his employees to commit frauds, or abet-

ting in the commission of fraud upon the revenues shall be abhored as illegal and unethical.

7. No broker shall take undue advantage of the ignorance, credulity, or confidence of his clients or of employees and other persons with whom he deals.

8. No broker shall permit himself to be used as a "dummy" in the enjoyment of the privileges to conduct a customs brokerage business.

Adopted and recommended by the Board of Examiners for Customs Brokers at Manila, Philippines, this 15th day of April, 1958.

Approved by the Office of the President in a 4th Indorsement, dated March 23, 1959.

ELEUTERIO CAPAPAS
Chairman

PROTASIO CAÑALITA
Member

GREGORIO S. MIRANDA
Member

Attest:

A. L. BUENAVENTURA
Acting Secretary

Approved:

A. DEL ROSARIO
Commissioner of Civil Service

Department of Agriculture and Natural Resources

BUREAU OF MINES

MINES ADMINISTRATIVE ORDER NO. 18

REGULATION CONCERNING THE PERFORMANCE OF PETROLEUM EXPLORATION WORK OBLIGATIONS AND THE PREPARATION OF REPORT OF EXPENDITURES INCURRED IN CONNECTION THEREWITH.

Pursuant to the authority granted to the undersigned by Article 94 of the Petroleum Act of 1949 (Republic Act No. 387) and with a view to implementing Articles 25, 47 and 48 thereof concerning the performance of exploration work obligations and the preparation of report of expenditures incurred in connection therewith, the following regulation is hereby promulgated:

1. *Minimum Exploration work required.* — Any holder of an exploration concession is obligated to spend annually in the direct prosecution of exploration work within his concession not less than the amounts specified in Article 47 of the Petroleum Act of 1949 and/or the deed of exploration concession issued to the concessionaire.

This work may consist of any or all or combination of any of the following: topographical or geological survey; reconnaisance or detailed mapping or cross-sectioning; geophysical surveys by magnetometer, gravity meter or seismograph; core or exploratory drilling, or any similar work accepted as good oil field practice.

2. *Exploration work performance outside concession area.* — Work done outside the concession area shall not be considered in the determination of a concessionaire's compliance with the minimum exploration work obligation except in the case of an adjoining concession block as provided in Article 48. However, should the Director of Mines be convinced that such work is closely related to/or will redound to the benefit and early exploration of the area covered by the concession, the expenditure incurred therewith may be credited against the work obligation on the concession that will receive such benefit.

3. *Cost of delivered equipment.* — The cost of delivered equipment actually used in a concession or concessions but were not used up or consumed in the use thereof and as such may be considered as non-expendable items or fixed assets, may be credited against the work obligation on the concessions where the equipment was actually used at the rate of not more than twenty-five *per centum* of the cost thereof annually from the moment the said materials and equipment were delivered; *Provided,* That if the delivered equipment had not been actually used, the cost thereof may be credited against the work obligation on the said concession or concessions at the same rate of not exceeding twenty-five *per centum* of the cost thereof in any year from the moment same was delivered but in no case to exceed fifty *per centum* of the amount of the work obligation on the said concessions for that year.

In case the concessionaire holds two or more concessions and said equipment has been used in one or more but not in all of the said concessions, the delivered equipment shall be credited to the concessions where they were actually used to not more than twenty-five *per centum* of the cost thereof annually from the time the said equipment was delivered. Should there then be a balance in the twenty-five *per centum* of the cost of the equipment and the amount credited to such concession or concessions in any year, the balance may, at the option of the concessionaire, be distributed to any or all of other concessions held by him where they were not used; *Provided,* That

in no case shall such amount exceed fifty *per centum* of the amount of the annual work obligations on any of the said concessions where the materials or equipment were not used. The amount equivalent to the percentage allowed in the foregoing paragraphs to be credited against the work obligation, may be distributed equally among the concessions held by him or *pro rata*, according to their respective hectarage, at the option of the concessionaire.

In all cases the balance of the work obligation on any concession for any year not covered by the percentage of the cost of the delivered equipment as provided in the foregoing paragraphs shall be spent in the actual exploration work in the concession.

The cost of delivered equipment shall mean the landed cost thereof. If the equipment has already been used previously by the concessionaire or by an associated enterprise of the concessionaire and subsequently transferred to the account of the concession, the cost shall mean the book value or present worth thereof, as shown by the financial report of the concessionaire certified by a certified public accountant.

4. *Cost of Purchased data or information.*— The cost of data or information purchased by a concessionaire from another which data or information, from the findings of the Director of Mines, are valuable to or will expedite the early exploration of purchaser's concession, may be credited against the work obligation on the said concession but only to the extent of thirty *per centum* of such work obligation. The balance of the work obligation shall be spent in the actual exploration work in the concession.

The vendor of such data or information, if he be a concessionaire, shall subtract the full amount he received by such sale, from the amount he spent for that year to determine his compliance with his work obligation.

5. *Contribution on drilling inside adjoining concession.*—Should a holder of an exploration concession desire to contribute to the expenses of drilling a well in an adjoining concession and from the findings of the Director of Mines, such drilling will contribute to the early exploration of the area covered by the concession where the drilling shall not be done, such amount contributed may be allowed to be credited against the work obligation on the said concession to the extent of not exceeding fifty *per centum* every year, of the amount contributed but in no case to exceed seventy *per centum* of the work obligation on the said concession for that year. The balance of thirty *per centum* or more, as the case may be, shall be spent in exploration work within the said concession.

6. *Direct administrative expenses.*—Overhead expenses shall not be allowed to be credited against the required work obligation. However, should the Director of Mines be convinced that the concessionaire had done creditable field work on his concession, direct administrative expense may be allowed in an amount equivalent to not more than twenty *per centum* of the total approved expenditures incurred in the actual exploration of the area. The amount spent in the actual exploration of the area plus the twenty *per centum* allowed for direct administrative expense shall be taken into consideration in the determination of concessionaire's compliance with his minimum work obligation. For this purpose, negotiation expenses, application fees, exploration taxes, premium on bonds, publication expenses, commissions, representation expenses, subscription or membership fees, and other similar items do not fall under exploration or direct administrative expenses. Direct administrative expense, on the other hand, may include salaries and wages of headquarters personnel, their transportation expenses and travel allowances, accounting and legal fees, office rental, cost of furnitures, office equipment and supplies, expenses on light, telephone, water and stationeries and other similar expenses.

7. *Exploration work on two or more exploration blocks.*—In case two exploration blocks are held by the same concessionaire and the same are adjoining each other and are located in one petroleum region, the total amount of work obligations for exploration required for the initial term of four years for the two adjoining blocks may be spent within any one of them as if they are covered by a single concession; *Provided,* That the total amount of work obligations required to be spent annually during the first and second extensions under Article 47 of the Petroleum Act of 1949 on any two or more exploration blocks, whether adjoining or not but located in one petroleum region and held by the same concessionaire, may be spent within any one or more of the said blocks.

8. *Carrying forward of exploration expenditures.*—Any amount actually spent for exploration work and allowable under this regulation in excess of the minimum amount required for any year or years may be carried forward and credited to exploration work obligations required for the succeeding years during the existence of the concession unless otherwise provided by the concession contract.

9. *Work expenditures unjustified by technical report.*—The whole or such fraction of the exploration work expenditures as is not justified by the technical report or reports shall not be allowed. Expenditures for work not performed in accordance with a duly approved work program or approved amended work program for any year may be disallowed.

10. *Expenditures on unauthorized or unapproved operations.*—A concessionaire shall not begin to

drill redrill, repair, deepen, alter casing or liner, stimulate the production by acid, gas, air, water injection, or any other method, change the method of recovering production, nor shall he perform water shut-off, formation test, shooting plug backs, abandonment of a producing, development, or exploration well or use any formation or well for gas storage or water disposal without first notifying the Director of Mines, and in case of drilling a well, same shall not be started nor abandoned without the notice having been first approved by the Director of Mines.

He shall notify the Director of Mines in writing or by the most expeditious method of communication available prior to the commencement of operations to be performed in connection with water shut-offs, formation tests, shooting, plug backs, or abandonment of a structural well.

Any such work done without approval of the Director of Mines shall be deemed unauthorized and any expenditure incurred in connection therewith may be disallowed in the consideration of concessionaire's compliance with the minimum work obligation in addition to whatever penalties that may be imposed by reason thereof, in accordance with law.

11. *Report of expenses.*—A separate report of expenses for each concession certified by a certified public accountant, shall be submitted within sixty days following the end of each concession year and the same shall cover the expenses incurred during the preceding concession year, *Provided,* That in meritorious cases the Director of Mines may grant an extension of time to file the report but such extension may not exceed thirty days.

The report shall give a general classification of the expenses incurred in the manner suggested in the following outline:

STATEMENT OF EXPENDITURES FOR PEC NO. .....

For concession period from ..... to .....

(1) *Equipment:* .....

Depreciation of:

a. Motor vehicles ....
b. Drilling equipment ....
c. Other transportation equpment ....
d. Field equipment and instrument.... .....

(2) *Geological Survey:* .....

a. Salaries of Geologists ....
b. Salaries of asst. geologists ....
c. Living expenses of geologist and assistants in the field ....
d. Travel expenses to and from field ....
e. Travel expenses in field area ....
f. Lump sum for laborers ....

(3) *Geophysical Survey:* .....

a. Cost of marine gravity survey ....
b. Cost of land gravity survey ....
c. Cost of aeromagnetic survey ....
d. Cost of land magnetometer survey .....
e. Cost of seismic survey ....

(4) *Drilling*: .....

a. Salaries & wages of personnel (to be classified) ....
b. Materials (to be classified) ....
c. Supplies (to be .... (classified)
c. Supplies (to be classified) ....

(5) *Topographic Survey:*

a. Salary of surveyor or engineers ....
b. Lump sum for laborers ....

(6) *Maps and Airphotos:* .....

a. Cost of maps ....
b. Cost of airphotos .....

(7) *Supplies:* .....

a. Gasoline and oil of field or motor vehicles ....
b. Field supplies ....

(8) *Miscellaneous:* .....

a. Paleontological and petrographic analysis ....
b. Medical expenses of fieldmen ....
c. Maintenance of field motor vehicles ....

(9) *Other expenses (to be classified)*: .....

TOTAL ....

SURVEY PARTY. FOR PEC .....
for period ..... to .....

1. Head of Party:

....

2. Other Members:

....

....

....

3. Number of laborers employed in field ..... for ..... days.

4. Party months for:

a. Geologic investigation

b. Each phase of geophysical survey

5. Estimate of percentage of completion of presently planned program:

a. Geologic investigation

b. Each phase of geophysical survey

Certified correct:

.....

(Concessionaire/Agent)

AUDITOR'S CERTIFICATE

UTILITY MODEL PATENT NO. 52

In accordance with the generally accepted auditing standards, we/I have examined the statement of expenditures, together with the supporting accounting records and documents therefor, incurred on Petroleum Exploration Concession No. ..... for the ..... concession year (19..... to 19.....) and have found that the same reflects fairly the exploration expenses incurred in the direct prosecution of exploration work obligation on said concession as required by Article 47 of the Petroleum Act of 1949 (Rep. Act No. 387) and as carried in the books of account of the concessionaire.

Certified Public Accountant

Certificate No. .....

P. T. R. No. .....

Dated .....

12. *Failure to perform necessary work obligations.*—Failure to comply with the minimum work obligation on any concession in any one year as in this regulation allowed, the concessionaire shall pay to the Government the dierence between the minimum amount required and that actually spent and/or allowed for any year. The bond posted by the concessionaire shall be held accountable for such failure. Continued failure to perform the necessary exploration work within the concession area for two consecutive years shall cause the cancellation of the concession.

Failure of a concessionaire to submit a satisfactory report of expenditures, shall result in a presumption that the concessionaire has failed to comply with the minimum work obligation.

13. *Reconsideration and Appeal.*—The concessionaire shall be notified by the Director of Mines of any item or items being questioned or disallowed in his report on expenditures. Item or items not questioned or disallowed shall be deemed approved.

Within fifteen days from receipt of such notice, the concessionaire may either explain the said items or ask for reconsideration of the ruling of the Director of Mines.

The Director of Mines shall make a ruling on said explanation or request for reconsideration. If the concessionaire shall not be satisfied with the ruling of the Director of Mines, he may file an appeal to the Secretary of Agriculture and Natural Resources within fifteen days after receipt of such ruling. Failure to give explanation and/or ask for reconsideration or to file an appeal to the Secretary of Agriculture and Natural Resources, as the case may be within the period allowed, shall result in the ruling becoming final and binding upon the concessionaire. The decision of the Secretary of Agriculture and Natural Resources on the appeal shall become final fifteen days after receipt thereof by the Concessionaire.

14. All rules and regulations contrary to any provision of this Order are hereby repealed.

15. This Order shall take effect upon its approval.

Approved August 6, 1959.

JUAN DE G. RODRIGUEZ
Secretary of Agriculture and Natural Resources

Recommended by:

BENJAMIN M. GOZON
Director of Mines and Chairman, Petroleum Technical Committee

CENTRAL BANK OF THE PHILIPPINES

CIRCULAR NO. 97

August 27, 1959

OPENING OF BRANCHES, AGENCIES, AND EXTENSION OFFICE OF BANKING INSTITUTIONS, AND TRANSACTING BUSINESS OUTSIDE THE PREMISES OF THE PRINCIPAL OFFICE.

1. No bank or banking institution operating in the Philippines except the Philippine Natonal Bank and the Development Bank of the Philippines, shall establish, open and/or operate branches, agencies, extension offices, sub-office, mobile banks, or any office, or transact business (such as the receipt and payment of deposits) outside the premises of its duly authorized principal office, without the prior approval of the Monetary Board.

2. Banks, other than the Philippine National Bank and the Development Bank of the Philippines, already operating any of the above-mentioned offices or transacting business outside the premises of their duly authorized principal office without authority from the Monetary Board, shall apply for such authority to operate such office or transact such business.

3. This circular shall take effect immediately.

ANDRES V. CASTILLO
Deputy Governor

Approved:

By the Monetary Board
August 18, 1959

CIRCULAR NO. 98

August 27, 1959

EXEMPTION OF CERTAIN REMITTANCES FROM THE PAYMENT OF THE MARGIN FEE ON SALES OF FOREIGN EXCHANGE

Whereas, Section 3 of Republic Act No. 2609 provides:

"SEC. 3. The provisions of this Act shall not apply to the liquidation of drafts drawn under letters of credit nor of contractual obligations calling for payment of foreign exchange issued, approved and outstanding as of the date this Act takes effect and the extension thereof, with the same terms and conditions as the original contractual obligations: * * *". *In view thereof:*

SECTION 1. The foreign exchange margin of 25 per cent prescribed in Central Bank Circular No. 95 dated July 17, 1959, pursuant to the provisions of Republic Act No. 2609, shall not apply to the following remittances:

(*a*) Remittances in payment of installments, amortizations and interests on contractual obligations outstanding as of July 16, 1959, under loan agreements calling for the payment of foreign exchange approved by the Central Bank on or before said date.

(*b*) Remittances of profits and dividends declared out of profits earned up to September 30, 1958, and covered by exchange licenses approved and issued by the Central Bank on or before July 16, 1959.

(*c*) Remittances of cable, telephone and telegraph companies to connecting cable, telephone and telegraph companies abroad of traffic payouts for radiogram and telephone messages transmitted from the Philippines prior to July 16, 1959.

(*d*) Remittances by airline and shipping companies of passenger and freight revenues collected before July 16, 1959, from ticket sales or freight contracts approved by the Central Bank prior to said date.

(*e*) Remittances of reinsurance premia under reinsurance treaties approved by the Central Bank prior to July 16, 1959, and which became due before the said date.

SEC. 2. Applications for license to purchase foreign exchange for any of the purposes specified in Section One hereof shall be accompanied by an application for exemption from the payment of the 25 per cent margin on the form prescribed therefor. A certificate of exemption will be issued by the Central Bank covering each remittance determined to be exempt as provided above. Such certificate of exemption will be authority of the Authorized Agent to sell foreign exchange without collecting the 25 per cent margin.

SEC. 3. The 25 per cent margin shall not be collected by Authorized Agent Banks on the liquidation of drafts drawn under letters of credit issued, approved and outstanding as of July 16, 1959, and importers-drawees liquidating said drafts need not obtain from the Central Bank certificates of exemption of the sale of exchange from the margin in such cases. But Authorized Agent Banks shall submit to the Central Bank on the first and sixteenth of each month a report in triplicate of the drafts which were liquidated during the preceding fifteen days in which the

margin was not collected, showing the numbers, dates and amounts of the drafts, the names and addresses of the drawers and drawees, the numbers, dates and amounts of the letters of credit involved. The original and duplicate of the report shall be sent to the Department of Supervision and Examination and the triplicate to the Auditor of the Central Bank.

Pursuant to paragraph IX, Section 2 of Republic Act No. 2609, the 25 per cent margin shall not be collected in respect to remittances in payment of premiums by veterans on life insurance policies under the Government of the United States.

For the Monetary Board:

By: M. CUADERNO, SR.
Governor

Approved:

By the Monetary Board.
August 27, 1959

APPOINTMENTS AND DESIGNATIONS

Ad Interim Appointments

September 1959

Bonifacio Salas as Second Senior Official of the Philippine Reparations Mission in Japan, September 12.

Marciano S. Du as City Attorney of Ormoc City, September 12.

Col. Bibiano M. Viña as Chief of Police of Quezon City, September 14.

Octavio R. Ramirez as Solicitor in the Office of the Solicitor General, September 15.

Bienvenido Valera and Francisco Albano, Jr., as Members of the Board of Directors of the Philippine Tobacco Administration, September 15.

Designations by the President

September 1959

Eugenio Ermac as Acting Member of the Municipal Board of Iligan City, September 14.

Jesus Salalima as Acting Member of the Provincial Board of Albay, September 7.

Primo E. Ferrer as Acting City Treasurer of Cabanatuan, September 7.

Ressurreccion Nacalaban, Emilio Velez, and Fernando Pasana, Jr., as Acting Members of the Municipal Board of Cagayan de Oro City, September 15.

Pacifico Lagustan as Acting Member of the Provincial Board of Marinduque, September 17.

Roberto Rodriguez as Acting Member of the Municipal Board of Naga City, September 17.

Narciso Cipres as Acting Member of the Municipal Board of Dumaguete City, September 16.

Jose Nolasco as Acting Member of the Municipal Board of Cebu City, September 16.

Protacio J. Solon and Candido Vasquez as Acting Members of the Municipal Board of Cebu City, September 15.

Samuel Arcamo as Acting Member of the Provincial Board of Zamboanga del Sur, September 15.

HISTORICAL PAPERS AND DOCUMENTS

PRESIDENT GARCIA'S SPEECH AT THE 11TH NATIONAL CONVENTION OF THE PHILIPPINE JAYCEES AT ST. LOUIS AUDITORIUM, BAGUIO CITY, OCTOBER 15, 1959

MY FRIENDS:

"They are ill discoverers that think there is no land, when they see nothing but sea."

I QUOTE from Bacon, one of the great thinkers of all time, from his *Advancement of Learning.*

Perhaps, one of the drawbacks to advancement in our own time in this our beloved country is negative thinking which is a vestige of colonial times when many of us accepted in resignation what we were taught in all subtlety that we were capable of only so much, and so far, and that we could not stand on our own without a mentor or a protector. The outcome has been atavism, into which the Filipino stragglers of colonial mentality would pull back or hold down the rest of the nation. Instead I urge that by and with a life of positive thinking, a life of faith, confidence and hope, and determination we can mould and achieve a great destiny as a sovereign state and as a free people.

With political independence achieved, we are now pursuing the economic *summum bonum* for ourselves and our country. I like to repeat here what I said in my first message to Congress, viz: "The faith of this nation is abiding; the spirit of this nation is mighty; the determination of this nation is invincible. On this rock of faith, with this spirit and determination, let us build the house of the nation."

I hold firmly to this faith. But even as I speak before you, the voices of despair are active in the land. They seek to weaken our faith, undermine our courage, and sap our determination. They spread dissension and promote strife in the willful and deliberate effort to wreck the very foundations of the house of the nation.

These voices belong to the opposition. They say our policies are confused. They say our policies are ineffective. They say that we are bringing the country into ruin.

But these false prophets find themselves rebuffed by incontrovertible realities.

I take this opportunity to report to the Filipino people that for the first time in post-war years and within only two years of the implementation of my economic policies, our country has achieved a favorable balance of trade in the amount of ₱95.2 million as of July 31, 1959. There are definite indications of the heartening upswing of trade in our favor auguring a 100-million peso favorable balance of trade by the end of this year.

Now, this favorable balance of trade is not an accident. It is a direct consequence of the economic policies of the Nacionalista administration implemented wisely and courageously.

Let me remind this convention that in 1949, considered the peak year of the Liberal administration, our unfavorable balance of trade went up to the staggering amount of ₱676 million. When the Nacionalista administration took over in 1954, we inherited from the Liberals still a huge deficit in our foreign trade which we gradually overcame until this year of 1959 when we turned the tide from minus to plus by registering in the first seven months a surplus I mentioned before, 95 million pesos, with the bright prospect of going over the ₱100 million mark at the end of the year.

When the Nacionalista Administration took over the reins of government at the end of 1953 by the overhelming mandate of the people, the cause of economic development received fresh impetus. It was clearly recognized that without development there could be no economic independence, and without economic independence the fruits of political freedom could never fully be ours. Therefore, the new Administration triggered an acceleration of the development program. The government deliberately cultivated an atmosphere conducive to economic expansion on all fronts. The public authority poured its expenditures into economic and social development projects—into dams and power-plants, irrigation systems, roads, bridges, portworks, technical schools—into the multitude of overhead facilities without which no healthy development can be sustained. Private enterprise was encouraged to establish and build its factories and firms in industry and extend its productive activities in agriculture. Those who would enter production were accorded preferential treatment in the form of easy industrial and rural credits, tax concessions and subsidies, marketing aids, priority in the use of dollars, and the protection of tariffs and import controls. The response of private enterprises to these policies surpassed our most optimistic expectations. A heartening upsurge of investments and industrial activity took place. Therefore, despite the inherent weaknesses of under-development aggravated by unfavorable influences from outside our borders, the country was able to push forward with great stride along the highway of progress.

As direct results of these wisely laid-down policies and courageously implemented plans we may be allowed to overstep the bounds of modesty and mention a few more of the outstanding achievements besides the first one, that of achieving a favorable balance of trade for the first time in postwar years:

1. The recent discovery of oil mines in Cebu where the first well yielded a daily output of 72 barrels of oil without the aid of a pump. Oil experts predict that this well will easily fall as Class A–1 oil well under American standards. The Administration immediately put the resources of the Central Bank behind this 100% Filipino oil mining company to enable it to expand as rapidly as possible its program of oil digging. The oil era of the Philippines has thus commenced under most auspicious circumstances. If the Venezuelan Bolivar (equivalent to our peso) has become stronger even than the dollar where the only pillar of its national economy is oil, there is ample reason to hope that the Philippine currency should grow even stronger, as, besides oil, our national economy has several other pillars; such as, sugar, copra, hemp, tobacco, timber, minerals, and very soon steel.

2. I am happy to report also to you, that as of October 14, 1959, the peso in the Hongkong money market has risen in value by 53 pts. This is considered a spectacular rise taking into account the fact that when the margin bill was discussed in Congress, the peso value with reference to the Hongkong dollar was 1.27 and now it has risen to 1.80 with some indication of rising still. This means that with the passage of the stabilization measures the most important of which is the so-called dollar margin bill, the Philippine currency has gained stability which is being the most recognized by the whole world.

3. I am also happy to announce that the dollar reserves of this country has risen to $168 million where it was only around $130 million during the discussion of the dollar margin bill.

4. As you all know, one of the surest gauges of economic progress is the gross national product. When the Liberal regime came to an end in 1953, the gross national product was over ₱8 billion. By the end of 1957, the first four years of the Nacionalista regime, our national product skyrocketed to over ₱10 billion. In 1958, the spectacular rise under the Nacionalista husbanding of the national economy continued and we chalked up a gross national product of 10 billion, 464 million pesos showing an increase of two billion 462 million pesos in five years.

5. Another index of economic growth is in the fields of agriculture, manufacturing, and mining.

I submit to you figures not only from our own statistics but also from the statistics of the United Nations. Since 1954 when the Nationalista took over, our agriculture production has advanced by 35.1%, mining has registered an increase of 50.2%, while manufacturing production, achieved a remarkable 73.7% improvement. In modern times these advances are without parallel in any part of

the world. On the overall, production in all fields has increased three times.

6. Another significant indicator of the pickup of economic activity is the number of new business establishments set up. Since 1953, the records show that a total of 35,520 business firms were organized and registered for operation, about 4,000 of them in the first six months of 1959 alone. Would this be possible, if as some of our critics' claim, the economy is stagnating and business is coming to a standstill?

7. If our critics are right, how account then for the tremendous growth in banking facilities? Banks are not set up and expanded unless adequate commercial and industrial activity require their services. Today there are 18 commercial banks and 128 rural banks serving the people throughout the country as compared to 15 commercial banks and 18 rural banks in 1953. Consequently, total resources have grown tremendously from ₱1.26 billion in 1953 to ₱2.23 billion as of the end of June this year showing an increase of ₱970 million. In addition, more than 500 ACCFA cooperative marketing associations throughout the islands now serve the rural areas with credit, marketing, and modern warehousing facilities compared to the 120 units in 1953.

8. The administration's professional critics have charged the Nacionalista administration for the rise of prices of all commodities in this country. Before a crowd of business-minded youth such as this I need not state that this upward trend in prices is a world trend not a local one. The world economy of which we are only a segment is the root cause in the rise in prices. But I would like to emphasize the fact that this world-wide upward trend in prices has given us more benefit than disadvantages. Let me cite you actual instances. In 1958 a quintal of copra (100 kls.) cost ₱37.70; today it costs ₱51.12 or a benefit in our favor of ₱13.42 per quintal. Hemp per picul, was ₱39.43 in 1958; now it is ₱55.26, or a benefit in your favor of ₱15.83 per picul. Coconut oil per quintal (100 kls.) in 1958 was ₱65; it is now ₱86, or a benefit in our favor of ₱21 per quintal. Desiccated coconut per quintal in 1958; ₱63, now ₱77.59, or a benefit of ₱14.59 per quintal. When we take into account that for the first half of 1959, our total exports aggregate value was ₱539 million as compared to ₱461 million for the same period in 1958, or a gain of ₱78 million, whereas our imports for the same period in 1958 showed decrease of ₱98 million, we can readily see that the upward trend in prices has been to our advantage as a whole.

9. The 9th achievement along economic line which I consider of vital importance is the achievement within one year of my administration of self-sufficiency in food. For many decades the Philippines has always imported rice to

supplement its home production in feeding the population. We spent millions for the importation of food, but in 1958 we reversed history. We have achieved self-sufficiency in food and this year the Cabinet authorized the NARIC to export to Japan 24,000 metric tons of rice and 8,000 metric tons of corn. We have in the NARIC bodega a surplus stock of 2 million cavans of rice above our national requirement for food. The progress report of the Department of Agriculture and Natural Resources predicts another bumper crop this year which will swell the surplus of rice and corn. Again, our achievement in this line has reversed history from that of a rice importing country to that of a rice exporting one. My friends, this alone would entitle the Nacionalista administration to a reaffirmation of confidence by the Filipino people.

10. Another achievement of this administration wrought with big possibilities is the establishment of a Philippine merchant marine under Act No. 1407. Let us not forget that the Philippines has only a total of 57,000 tons of Philippine registry engaged in foreign shipping. As a result of that, only 3 per cent of our foreign trade, that is, exports and imports, are carried in Philippine bottoms and 97 per cent are carried by vessels of foreign registry. When we take into account that in 1958 the aggregate value of our foreign trade was in round figures ₱2 billion, we will realize how many millions of pesos the country pays for freight to foreign countries. So we started an ambitious program of expanding our foreign shipping. We ordered 12 vessels of 10,000 tons each to contract with Japanese shipbuilders and another 15 vessels of 10,000 tons each through the reparations agreement which will give us an additional total of 270,000 tons of foreign shipping, which added to what we have, sum up to 327,000 tons. Our goal is to have an aggregate total tonnage of 500,000 tons. My friends, by this achivement we expect to have a tremendous boost of our foreign trade and save hundreds of millions of dollars in freight which henceforth will go to Philippine shipping firms. Ships flying Philippine flags will sail in the seven seas of the world carrying our exports, and homeward bound, carrying our imports, thereby triggering a new era of foreign trade expansion which will certainly break all previous records.

My friends, these 11 achievements of the Nacionalista administration, modesty aside, constitute glowing chapters in the saga of our economic development. But the Nacionalistas are not satisfied with material progress alone. We are also devoting a great part of our efforts in trying to lift up the moral and cultural heritage of the nation. So right after the inception of my administration, we announced an

unrelenting campaign against graft and corruption mostly inherited from the previous administration of the Liberals, and we are proud to announce that in one year and seven months of anti-graft campaign we produced results of which the Nacionalista Party can be proud. Here are the figures which I would like to submit to your consideration. During that period of time, 1958–1959, without fanfare we prosecuted a total of 11,870 cases of all types of venalities and corruption. Of this more than 50 per cent had been decided or roughly 6,000 cases, and 4,000 cases were found guilty and punished in varying degrees according to the gravity of the guilts committed. Incidentally, among those found guilty and punished accordingly are one undersecretary of department, two bureau directors, justices of the peace, fiscals, and officials in various government-owned or controlled corporations, etc. One bureau director, two assistant bureau directors are yet under suspension. On the other hand, the extravagant promises of the Liberal Party to put up a clean, honest, and graftless administration if returned to power would sound empty and hallow in the face of their record of eight years of lethargic inaction and complicity in an unparalleled era of graft, corruption, and terrorism in election.

Before I conclude, permit me to discuss certain other policies which have bearing upon issues in the forthcoming elections. Presently I would commend to your support and cooperation the Administration's program to spread more of the fruits of our progressing economy to the people. We have urged the channelling of investments to the provinces and encouraged the dispersal of industrial enterprises away from the traditional centers of population whenever feasible. Such developments would bring employment and technical opportunities to provincial workers, provide income not only for the provincial governments but to the area as a whole, stimulate trade and commerce, and consequently benefit local living conditions. This is our policy of dispersal. I am gratified to report that in line with our proposals, many industries have seen fit to establish their main plants in different parts of the country. Thus we have nail factories in Cebu and Negros Occidental, glassware in Rizal, metal products manufacturing in Bohol, tin can manufacturers in Bulacan and Davao City, a cassava flour mill in Lanao, a rubber plantation project in Zamboanga, soap plants in Pangasinan and Laguna, cement plants in La Union, Iloilo, Cebu, and Mindoro, and other industrial concerns in practically every province in the archipelago. Continuing cooperation from the business communities all over the country is a must if the government is to succeed not only in the prosecution of economic development, but also in the distribution of its benefits to every Filipino.

Another important policy in which the Nacionalista administration is deeply committed is the so-called Filipino First policy. Charges of insincerity in the implementation of Administration's Filipino First policy have been made in the press and on political platforms. In answer, let me cite the bare facts. To the accusation that dollar allocations for Filipino businessmen are declining, I have this to say. The Central Bank which is the specific agency in charge of exchange allocation reports that while Filipino quota-holders received 39 per cent of total regular allocations in 1953, they received 44 per cent in 1958 and 51 per cent during the first semester this year. Americans were the next most favored groups, getting 26 per cent of the allocations in 1953, 36 per cent in 1958, and 34 per cent during the first half of 1959. On the other hand, the share of the Chinese which came to 20 per cent in 1953, dropped to 10 per cent in 1958 and 7.5 per cent from January to June this year. The share of other nationalities which came to 7 per cent in 1953, also fell to 2 per cent in 1958 and to less than 1 per cent in 1959.

I also wish to cite the percentage share of Filipinos in the capital investments of newly registered business. While 72 per cent of the investments of newly registered firms during 1953 belonged to Filipinos, in 1958 the share of Filipinos was 76 per cent; during the first semester this year it climbed to 81 per cent. The Chinese who were responsible for 24 per cent of the investments in 1953, accounted for 21 per cent in 1958 and only 18 per cent in 1959. Investment share of Americans and other nationalities have remained relatively the same.

Can the Filipino First policy then be a farce? Is the Filipino First policy anti-American or anti-anybody? Has the Administration raised the policy only for campaign purposes? The truth is that actually the Administration has plunged into the task of placing our growing progressive economy into the hands of our citizens. The facts speak for themselves.

I must say at least a few words about the foreign policy of the Nacionalista administration. I am proud to say the international prestige of the Philippines has been growing steadily in recent years. Our voice in international councils has gained more admiration and greater respect for the Nacionalist Party. My state visits to the United States in June of last year, to Japan in December of last year, and to Vietnam in April of this year have given fulfillment and more lasting publicity to our relations with the United States, Japan, and Vietnam. As a result of these successes, the Philippine Republic received invitations from many countries in Asia, like Korea, Nationalist China, Malaya, and

Indonesia for its president to make state visits to those countries. Even European countries like Spain, France, England, and Italy have invited the Philippine president to make state visits to those great European countries. Recently, the diplomatic negotiations between Foreign Affairs Secretary Serrano and Ambassador Bohlen on the question of the military bases produced tangible results which not only raised the national pride of the Philippines but also re-established on firmer and more enduring foundation the Philippine-American friendship, a friendship cultivated though 50 years of American and Philippine statesmen and patroits, and passed the acid test of two world wars. Out of these negotiations we reaped the following happy results:

1. The return to the Philippine Republic of all inactive bases.

2. The reduction of the period of lease from 99 years under the 1947 bases treaty negotiated by the Liberals to 25 years.

3. The delimitation of the bases retained by the American government which the Liberals negotiated bases treaty of 1947 were given without the determination of areas and boundaries.

4. The return to the Philippines of the title to the bases formerly claimed by the American Government.

5. The need of consultation with the Philippine Government for the use of the bases other than the defense of the Philippines.

6. The establishment of the mutual defense board composed of American and Filipino military men for the administration of the bases.

7. The need of consulting the Philippine Government before any missle launching stations (ICBM or IRM) is established in these bases.

All these achievements in foreign policy we can justly claim to have added to a better understanding and closer and more intimate relations with the United States by removing the causes of irritants. These achievements are neither Philippine victory nor American failure. It is the common triumph of two good friends—the Philippines and the United States—who in war have stood by each other and in peace have collaborated with each other for the cause of freedom and peace with honor and justice, and who will forever stand by each other for the cause of world peace.

In conclusion I would like to state to the members of this Jaycee convention that the Administration has kept faith with the Filipino people. It has dedicated itself to the difficult task of attaining the aspirations of the masses of our people. The Nacionalista Party from 1907 the year of its

birth, to 1946 led the Filipino nation in its great fight for freedom and independence. Now the same Nacionalista Party is leading fearlessly and relentlessly in the great fight for economic independence. I submit that the Nacionalista Party has chalked up considerable achievements in this respect, the most outstanding of which I had succinctly summarized in my remarks. In all humility I submit to you the plea for re-affirmation of your confidence in my administration which I assure you will lead our beloved country to new frontiers of progress and vaster horizons of accomplishments.

DECISIONS OF THE SUPREME COURT

[No. L-9185. December 27, 1958]

BATANGAS TRANSPORTATION COMPANY, ET AL., petitioners, *vs.* LAGUNA TRANSPORTATION COMPANY, respondent

1. APPEAL AND ERROR; FINDING OF FACT OF PUBLIC UTILITY COMMISSIONER.—"Where after a full hearing the Public Utility Commissioner makes findings of fact, and there is a material conflict in the evidence, such findings will not be disturbed where they are reasonably supported by testimony" (Inchausti, Steamship Co. *vs.* Public Utility Commissioner, 44., 363).

2. ID; PUBLIC UTILITY; ADDITIONAL SERVICES IS A QUESTION OF FACT.—"Whether public necessity and convenience warrant the putting up of additional services on the part of the appellee in the case at bar, is a question of fact which Public Service Commission has found in the affirmative. This finding, being supported by sufficient evidence, should *not be* disturbed." (Raymundo Transportation Co., *vs.* Cervo, G. R. No. L-3899, May 21, 1953).

3. ID; ID; WHEN SUPREME COURT MAY REVERSE ORDERS OF PUBLIC SERVICE COMMISSION.—The Supreme Court "will refrain from substituting their discretion on the weight of the evidence for the discretion of the Public Service Commission on questions of fact and will only reverse or modify such orders of the Public Service Commission when it really appears that the evidence is insufficient to support their conclusions" (Manila Yellow Taxicab Co. and Acro Taxicab Co. *vs.* Damon, 58 Phil., 75; *See also* Padua *vs.* Ocampo, et al. G. R. No. L-7579, September 17, 1955).

REVIEW of a decision of the Public Service Commission.

The facts are stated in the opinion of the Court.

Graciano C. Regala for the petitioners.
Evaristo R. Sandoval for the respondent.

BAUTISTA ANGELO, *J.:*

This is a petition for review of a decision of the Public Service Commission granting to Laguna Transportation Company three additional round trips from Pagsanjan, Laguna to Manila and another three additional round trips from Batangas Piers to Manila.

The application for increase was opposed by Laguna-Tayabas Bus Company and Batangas Transportation Company on the ground that they have already a bus service from Pagsanjan to Manila with buses starting from Pagsanjan as well as coming from the municipalities of Paete and Sta. Maria, and vice-versa, which is more than sufficient to satisfy the needs of the residents of Pagsanjan as well as of intermediate municipalities; and that the Batangas Transportation Company has likewise a bus

service from Batangas Piers to Manila and vice-versa, which is also sufficient to take care of the present volume of traffic.

Both parties presented testimontial as well as documentary evidence, and after considering the same, the Commission granted the increase prayed for in the application. Hence the present petition for review.

The evidence presented by the applicant, according to the Commission, shows "that passengers at Pagsanjan have a hard time in getting accomodation at Pagsanjan as the buses coming from Sta. Maria, Paete or other points farther south, are already filled up upon reaching Pagsanjan; that the residents of Pagsanjan desire to start at Pagsanjan very early in the morning so that they can arrive at Manila and transact their business early, and then return on the same day to Pagsanjan; that the buses of the applicant are already full of passengers and freight upon starting from Pagsanjan, so that the passengers are forced to wait for other trips for one hour or more; that the buses of Lazaro Limjuco only go as far as Sta. Cruz, Laguna, while the other operator M. Ruiz Highway Transit Inc. has very few trucks left, so much so that it makes very few trips passing Pagsanjan; that the Biñan Transportation Company has abandoned its trips on the line Lumbang-Manila, thus lessening the number of trips, passing Pagsanjan; that there are numerous passengers disembarking at the Batangas Pier coming from the different boats plying between Mindoro and Batangas who can not be accommodated by the buses waiting at the Batangas-Pier; that residents of Lobo (Batangas) in order to go to Manila have to ride on sailboats as far as Batangas Pier, but upon arriving at the the Pier, there are no available trucks so they ride on jitneys or autocalesas up to the poblacion of Batangas and then transfer to other buses going to Manila; that residents of Lipa City, Malvar and San Jose (Batangas) have a hard time riding in buses as those coming from Batangas and other municipalities farther than Batangas are already full of passengers when passing their respective municipalities; that on their return trip to Batangas, passengers go to the station of oppositors at Azcarraga, but can not easily get accommodation as the buses are already full, and if they are successful in getting a ride, it is only after forcing themselves through and crowding with other passengers."

"On the other hand,—the Commission continued,—the oppositors presented its evidence showing that they are already rendering an adequate service on the lines Pagsanjan-Manila and Batangas Pier-Manila; that there is not much traffic on said lines to warrant the increase of

trips applied for by applicant as shown by the reports of the checkers who have been assigned to establish check points along the lines; that oppositors have suffered loses in the operation of its auto-trucks on the lines Pagsanjan-Manila, Paete-Manila and Batangas Piers-Manila; and that applicant has not been making trips from the Batangas Pier but are cutting its trips up to the poblacion of Batangas only."

After a careful consideration of the evidence submitted by both applicant and oppositors, the Commission made the following conclusion:

"After a careful consideration of the evidence presented by both parties, we believe that applicant has presented enough evidence to show the need for the additional trips applied for by it. The records of the Commission show that in July, 1953, the Biñan Transportation Company asked for the cancellation of its Lumban-Manila line to enable said company to utilize the two auto-tracks authorized for this line on its Lemery-Manila line. And Maria Ruiz who was authorized to operate twenty-two (22) units in different municipalities in that part of Laguna, requested the reduction of her units to only ten. This, of course, has considerably reduced the number of trips in the region. The records of this Commission also show that oppositor Batangas Transportation Company has filed applications for certificates of public convenience on the lines Mataas Na Kahoy-Manila and Lobo-Manila as well as for increase of trips on its line San Juan de Bolbok-Manila, the greater portion of which lines are concurrent to the line Batangas Pier-Manila. As to the contention of oppositor Batangas Transportation Company that the applicant Laguna Transportation Company is cutting its Manila-Batangas Pier line only up to the Batangas poblacion, the evidence of record show that the buses of applicant proceed up to the pier. And this is also admitted by one of oppositor's witnesses.

"It is a matter of record in this Commission that on the line Batangas Pier-Manila, there are only three operators: the applicant Laguna Transportation Company with five round trips, the Biñan Transportation Company with four round trips, and the oppositor Batangas Transportation Company with another four round trips. On this line, the average interval of trips is fifty (50) minutes, while at Pagsanjan, the interval of trips is at an average of more than ten (10) minutes. We, therefore, believe that there is still room for authorizing the additional trips applied for. Besides, the three additional trips applied for by applicant on the the line Pagsanjan-Manila, will in a way take the place of the trips abandoned by the Biñan Transportation Company and Maria Ruiz."

Petitioners now contend that the Commission erred, among others, (a) in disregarding the report of its own agents regarding the volume of traffic that their buses usually carry which is less than fifty percent of their passenger capacity; (b) in disregarding the financial loses of petitioners; (c) in disregarding the cut-throat competition existing on the lines applied for among the different existing operators; and (d) in not giving credit

to the testimony of the agents of the Public Service Commission that respondent has been cutting most of its trips from Batangas Piers to Manila.

In connection with the first contention, petitioners argue that applicant merely presented two witnesses in support of its claim that there is need for the three additional round trips it now seeks from the Commission whose testimony is not sufficient to warrant the granting of said additional trips. This is contrary to the record for the same shows that besides witnesses Nicomedes Nicolas and Feliciano Amadin who testified that they had to wait long in order to be able to ride in the buses operating between Pagsanjan and Manila, applicant also presented Antonio Liwanag, its supervising-inspector, who testified that as early as 3:00 o'clock in the morning passengers already wait at the parking place in order to take the first trip that starts at 4:00 o'clock a.m. going to Manila but that the buses cannot accomodate all the passengers, and that the trucks starting from Pagsanjan or from other places when they pass Pagsanjan are already loaded which makes it impossible for them to accomodate those that go to the parking place. And this testimonial evidence is supported by Exhibits E and F, the first being a resolution adopted by the Municipal Council of Pagsanjan, and the latter a petition of the people of Pagsanjan supporting the petition for additional trips in the line Pagsanjan-Manila.

It is well-settled that "Where after a full hearing the Public Utility Commissioner makes finding of fact, and there is a material conflict in the evidence, such findings will not be disturbed where they are reasonably supported by testimony" (Inchausti Steamship Co. *vs.* Public Utility Commissioner, 44 Phil., 363). It was also held that "Whether public necessity and convenience warrant the putting up of additional services on the part of the appellee, is a question of fact which the Public Service Commission has found in the affirmative. This finding, being supported by sufficient evidence, should not be disturbed" (Raymundo Transportation Co. *vs.* Cervo, G. R. No. L–3899, May 21, 1952). This Court even went to the extent of holding that it "will refrain from substituting their discretion on the weight of the evidence for the discretion of the Public Service Commission on questions of fact and will only reverse or modify such orders of the Public Service Commission when it really appears that the evidence is insufficient to support their conclusions" (Manila Yellow Taxicab Co. and Acro Taxicab Co. *vs.* Danon, 58 Phil., 75; *See also* Padua *vs.* Ocampo, et al., G. R. No. L–7579, September 17, 1955).

The claim of petitioners that the reports of the checkers (In case of affirmation, last sentence will be omitted.) submitted by them were disregarded by the Commission may be true, but such is partly due to the fact that the trips authorized to respondent were at 3:00 a.m., 5:47 a.m., and 7:23 a.m., whereas the checkers' reports refer to checking made at 8:00 or 8:30 a.m., which certainly cannot cover the authorized trips (Exhibit 2). Moreover, those reports may not entirely disprove the fact that there are more passengers than what the buses can accommodate for they only show that the load of the buses at the starting point was fifty percent and no one can tell how many more passengers they can pick up on the way in their trip to Manila.

It is true that there is evidence showing that the present operators of buses on the lines Pagsanjan-Manila and Sta. Cruz-Manila agreed to cut the rates of ₱0.01 and ₱0.05 per passenger per kilometer to a flat rate of ₱0.80 per passenger from Sta. Cruz and ₱0.85 from Pagsanjan to Manila, but this does not necessarily reflect the existence of a cut-throat competition among said operators for precisely because of that reduction a substantial increase in the volume of passengers was registered induced by such reduction for which reason the additional round trips were found necessary by respondent.

The claim of petitioners that they are losing in the operation of their Paete-Manila *via* Pagsanjan line and Pagsanjan-Manila line is belied by their own witness Hinagpis who said that the net profit realized by them in their joint operation of their lines for the year 1954 is over ₱700,000 and by Exhibit 18 of petitioners covering the period from January to June 30, 1954 showing that their net profit was ₱370,080.34. This fact runs counter to their claim that there is a dearth of passengers on the lines they operate and which now serves as basis of their opposition to the petition of respondent.

Petitioners' contention that the Commission is granting the additional trips from Batangas Piers to Manila to respondent did not take into account the checkers' reports Exhibits 11, 12, and 13, is sufficiently answered by respondent's counsel in this wise: "The reports of the checkers themselves show precisely that from the starting point where they check at either the poblacion of Batangas or at San Jose, the TPU buses still carry a load of about 50 percent. This load is already a good load for TPU operation from starting points, for those buses could still pick passengers on the way up to Manila, which has a distance of about 100 kilometers from the poblacion of Batangas to Manila, about 85 kilometers from San Jose where another checking point was made by the agent, to Manila, and approximately over 70 kilometers from

Lipa City to Manila. This fact, alone, refutes the contention of petitioners, that the checkers' reports prove the contrary, for even the agents of the Commission who were placed at the witness stand, Messrs. Atienza and Dantayana, admitted on cross-examination that the passengers dropped before their check point, as well as the passengers after the check point, are not reflected in the number of passengers specified in their checkers' reports. They likewise, admit, further, that the trips made by TPU operators before the opening of their check point, as well as the trips made after the closing of the check point, are also not recorded in their checkers' report."

The foregoing makes it unnecessary to discuss the other points raised by petitioners in their brief.

WHEREFORE, the decision appealed from is affirmed, with costs against petitioners.

Parás, C. J., Bengzon, Padilla, Labrador, Concepción, Reyes, J. B. L., and *Endencia, JJ.,* concur.

Montemayor, J., reserves his vote.

Decision affirmed.

[No. L-11651. December 27, 1958]

TOMAS ROCO, ET AL., *plaintiffs and appellants, vs.* JUAN GIMEDA, *defendant and appellee*

1. LIMITATION OF ACTION; ACTION BASED ON FRAUDS.—Under the law, an action based on fraud should be instituted within four years from the discovery of the fraud. (Art. 114, Civil Code, as based on Section 3, paragraph 43 of Act No. 190.)

2. REGISTRATION OF TITLE TO LANDS; PATENT ONCE ISSUED; FRAUDULENT REGISTRATION; REMEDY OF PARTY AGRIEVED.—Once a patent has already been issued, the land covered thereby has the character of registered property in accordance with the provisions of Section 122 of Act No. 496, as amended by Act No. 2332, and the remedy of the party who has been injured by the fraudulent registration is an action for reconveyance. (Director of Lands *vs.* Register of Deeds, 49 Off. Gaz., (3) 935; Section 55 of Act No. 496.

APPEAL from an order of the Court of First Instance of Cebú. Rodríguez, *J.*

The facts are stated in the opinion of the Court.

Ricardo V. Reyes for plaintiffs and appellants.

Remotigue, Nacua, Remotigue & Palma and *Rafael O. Gimarino* for defendant and appellee.

LABRADOR, *J.:*

Appeal from a judgment of the Court of First Instance of Cebu, Hon. Jose S. Rodriguez, presiding, dismissing the complaint upon petition of defendants, on the ground that it fails to state a cause of action.

The complaint makes the following allegations: that before August 22, 1918, Esperidiona Caramihan, owned and possessed two parcels of land known as lots Nos. 2741 and 3082 of the Barili Cadastral Survey No. 219, covered by tax declarations Nos. 01865 and 01854; that upon the death of said Espiridiona Caramihan on August 22, 1918, said lands were partitioned equally among her children, who similarly possessed and cultivated their respective shares and paid the taxes thereon; that in the years 1925 to 1927, through ignorance and inadvertence of the heirs, the said lots were declared public land in a cadastral proceeding; that Espiridiona occupied said lands openly, adversely, continuously and publicly, planting coconut and fruit trees and building her dwelling house thereon, and that said improvements and house are still on said lots; that the present plaintiffs acquired their rights to the lots by purchase from the heirs of the original owner Espiridiona Caramihan; that on or about December 7, 1940, Juan Gimeda, defendant, filed an application for a free patent to said lands, surreptitiously and fraudulently, without knowledge of the owners and possessors, and on December 7, 1940, the Director of Lands issued an order

and in accordance therewith, on September 17, 1951, the Bureau of Lands issued patent No. 51552 in the name of defendant Juan Gimeda; that the plaintiffs and their original predecessor-in-interest have always been in the actual, physical, continuous and uninterrupted possession of the said parcels of land and defendant Juan Gimeda applied for and obtained his patent thereto without notice to them and without their knowledge, and secured the approval of his patent by fraudulent statements, alleging that he was the only heir of Espiridiona Caramihan and the only occupant of the land; and that by such false and fraudulent statements the Bureau of Lands approved his application and ordered the issuance of his patent.

The defendant filed an answer to the complaint, then amended the said answer and alleges that he is the youngest among the children of Espiridiona Caramihan; denies the allegations made in the complaint as to the acquisition by false and fraudulent means of the said lands; alleges that the complaint states no cause of action. He presents a counterclaim for ₱5,000 and ₱10,000 as moral and exemplary damages, respectively, and ₱500 as attorney's fees. Plaintiffs deny this counterclaim.

Later on defendant presented a motion to dismiss, alleging that the complaint alleges no cause of action, arguing that as the title in his favor was issued on October 17, 1951 and action was filed on July 15, 1954, the action was filed more than two years after the issuance of the patent, beyond the one-year period provided by law. The authorities cited for this defense are the case of Director of Lands *vs.* Gutierrez David, 50 Phil. 797; Villarosa *vs.* Sarmiento, 46 Phil. 814; Cabanos *vs.* Register of Deeds, 40 Phil. 620; Sumad *vs.* Judge of the Court of First Instance, et al., G. R. No. 8278.

It is to be noted that the petition does not seek for a reconsideration of the granting of the patent or of the decree issued in the registration proceeding. The purpose is not to annul the title but to have it conveyed to plaintiffs. Fraudulent statements were made in the application for the patent and no notice thereof was given to plaintiffs, nor knowledge of the petition known to the actual possessors and occupants of the property. The action is one based on fraud and under the law, it can be instituted within four years from the discovery of the fraud. (Art. 1146, Civil Code, as based on Section 3, paragraph 43 of Act No. 190.) It is to be noted that as the patent here has already been issued, the land has the character of registered property in accordance with the provisions of Section 122 of Act No. 496, as amended by Act No. 2332, and the remedy of the party who has been injured by the

fraudulent registration is an action for reconveyance. (Director of Lands *vs.* Register of Deeds, 49 Off. Gaz. [3] 935; Section 55 of Act No. 496.)

The order of dismissal appealed from is, therefore, reversed and the case is returned to the court *a quo* for further proceedings in accordance with law.

Parás, C. J., Bengzon, Padilla, Montemayor, Concepción, Reyes, J. B. L., and *Endencia, JJ.,* concur.

Order reversed.

[No. L-10484. December 29, 1958]

THE MUNICIPAL GOVERNMENT OF SAGAY, plaintiff and appellees, *vs.* JANUARIO L. JISON, ET AL., defendants. JANUARIO L. JISON, DOLORES VDA. DE JISON, and BENJAMIN BAUTISTA, defendants and appellants.

EMINENT DOMAIN; VALUE OF PROPERTY EXPROPRIATED BE DETERMINED AT THE TIME OF TAKING.—The value of the property expropriated should be determined by, among other factors, its character at the time of *taking* "and not as *potential* building" site (Manila Electric Co. *vs.* Tuason, 60 Phil. 663, 668). In short, if the property to be expropriated was *agricultural*, the adaptability thereof for conversion in the future into a residential site does not affect its nature when plaintiff assumed possession of the property, although it is a circumstance that should be considered in determining its value at that time, as an "agricultural" land.

APPEAL from a judgment of the Court of First Instance of Negros Occidental. Arellano, *J.*

The facts are stated in the opinion of the Court.

Provincial Fiscal Jesús S. Rodríguez for the plaintiff and appellee.

Januario L. Jison for defendants and appellants Dolores Vda. de Jison and Benjamín Bautista.

Enrique Mariño for defendant and appellant Januario L. Jison.

CONCEPCIÓN, *J.:*

The Municipal Government of Sagay, Negros Occidental, seeks to expropriate Lot No. 547–B of the Sagay Cadastre, with an area of eight (8) hectares, for a regional high school site. Said Lot No. 547–B is part of Lot 547 of the aforementioned cadastre, which, together with other lots, constitute what is known as Hacienda Cabalawan, originally belonging to defendants Dolores Lopez Vda. de Jison and Januario L. Jison, and containing a total area of 140 hectares. Inasmuch as these defendants had sold a portion of said Lot No. 547, forming part of Lot No. 547–B, to Benjamin Bautista, the latter was included as defendant. So was the Philippine National Bank, the same being the holder of a real estate mortgage on said Lot No. 547.

The defendants admit plaintiff's right of eminent domain and the public nature of the use for which the property was intended and is now being devoted. The only issue for determination is the amount of compensation due to the defendants. After hearing the parties, who introduced their respective evidence, and making an ocular inspection of Lot No. 547–B, the commissioners appointed by the Court of First Instance of Negros Occidental were divided on said issue. Two (2) commissioners recom-

mended payment of ₱3.50 per square meter, whereas the third commissioner favored ₱0.10 per square meter. Meanwhile, pursuant to an order of said court, dated June 8, 1953, plaintiff had taken possession of the property, upon deposit, first, of ₱10,000, and then—in view of defendants' opposition—of the additional sum of ₱10,000, all of which were turned over to the defendants on August 12, 1953. Thereafter, the government spent ₱33,000 in the construction of the necessary building and other structures, and operated the aforementioned regional high school, with an enrollment of 600 students. In due course, the lower court rendered a decision, dated December 27, 1955, the dispositive part of which reads as follows:

"POR LA PRESENTE, el Juzgado dicta sentencia, declarando dicho lote No. 547–B debida y legalmente expropiado por la demandante, el Gobierno Municipal de Sagay, para el uso publico de levantar y abrir la High School Regional, por el precio de ₱20,000.00 y en su virtud, declara que el susodicho lote es, por la presente, de la propiedad de la demandante.

La demandante pagara a los tres comisionados como compensacion ₱24.00 cada uno por los seis (6) dias que han trabajado, a razon de ₱4.00 al dia, de acuerdo con la ley.

Trasladese copia de esta sentencia al Registrador de Titulos de la provincia de Negros Occidental para todos los efectos legales." (Record on Appeal, p. 52.)

Defendants Dolores Lopez Vda. de Jison, Januario L. Jison and Benjamin Bautista have appealed from this decision. They maintain that the award in their favor should be ₱4.00 per square meter, or the aggregate sum of ₱320,000 for Lot No. 547–B. The main evidence for appellants, apart from the testimony of defendant Januario L. Jison, consists of the following:

1. A deed of sale (Exhibit 5) of part of said Lot No. 547, containing one thousand (1,000) square meters, executed, on August 8, 1949, by defendant Januario L. Jison, with the conformity of his co-defendant, Dolores Lopez Vda. de Jison, in favor of the Roman Catholic Bishop of Bacolod, at ₱4.00 per square meter;

2. A deed of sale (Exhibits 6) of portion of said Lot No. 547, containing 1,596 square meters, executed, on April 22, 1954, by the same seller in favor of the same buyer, for the total sum of ₱6,000.00, representing less than ₱3.80 per square meter;

3. A deed of sale (Exhibit 8) of another portion of said Lot No. 547, with an area of 2,000 square meters, executed, on April 30, 1950, by the same vendor, in favor of defendant Benjamin Bautista, at the rate of ₱2.00 per square meter; and

4. Three (3) deeds of sale (Exhibits 9, 10 and 11) of several parcels of land formerly included in Lot No. 548

of the Sagay Cadastre, which adjoin said Lot 547, and dated, respectively, April 12, February 11, and March 11, 1954, at prices ranging from ₱4.00 to around ₱4.80 per square meter.

Appellants, likewise, allege that, aside from being residential in nature, Lot No. 547–B is bounded by roads on three sides; that the parcels of land sold to the Catholic Church and a lot of eight (8) hectares donated by the Jisons, to the plaintiff, in 1950, were assessed for tax purposes at the rate of ₱1.00 a square meter; and that the properties in the vicinity of Lot No. 547–B have the benefit of modern facilities, such as water system, electric light, and commercial establishments operated nearby.

At the outset, it should be noted that this case was instituted in 1951, and that plaintiff took possession of Lot No. 547–B a little after June 8, 1953. Considering that the construction thereon of a high school building and its appurtenances, and the operation of such high school, have admittedly inured to the benefits of all other property in the locality, it is clear that the aforementioned sales made in 1954 do not offer a safe measure of the reasonable value of Lot No. 547–B, either in 1951, when the original complaint herein was filed, or in 1953, when the government took possession of said lot.

Upon the other hand, the sale of the Roman Catholic Bishop of Bacolod on August 8, 1949, at ₱4.00 per square meter, does not suffice to establish that such is the market price of Lot No. 547–B. Indeed, on April 22, 1954, an adjoining land was acquired, by the same buyer, at less than ₱3.80 per square meter, although, normally, the price of real estate tends to rise in the course of time. In fact, on April 30, 1950, a land similarly located was sold to Benjamin Bautista at ₱2.00 per square meter.

For a correct appraisal of the issue before us, its factual background is necessary. In this connection, it appears that the seat of the municipal government of Sagay used to be five (5) to six (6) kilometers from the barrio of Dalusan, in the outskirts of which—about one kilometer away from the center thereof, where the poblacion of the new Sagay is—Lot No. 547–B is situated. Shortly before the death of President Roxas, or late in 1947, it was decided that the seat of the government of Sagay be transferred to said barrio. The lands therein were devoted principally to the planting of sugar cane, and so was Lot No. 547–B. Hence, as late as 1950, Lot No. 547, containing 34.939 hectares—of which Lot No. 547–B forms part—was assessed for tax purposes in the aggregate sum of ₱16,430, or a little over ₱0.04 per square meter. At the time of the institution of this case, in

1951, as well as when plaintiff took possession of the property in question, in 1953, the total assessed value of Lot No. 547 was ₱22,530, or a little over ₱0.06 a square meter. On August 15, 1951, a committee composed of the Acting Provincial Treasurer, the Provincial Auditor and the District Engineer, all of Negros Occidental, estimated the value of Lot No. 547–B at ₱8,000, upon the ground that it was an agricultural land and that the current value of sugar land was ₱1,000 per hectare (Exh. O), which is the assessed value of first class sugar lands (Exhs. A, C and D). The agricultural nature of Lot No. 547–B becomes apparent when we bear in mind that, when plaintiff tried to occupy it in 1953, sugar cane was found growing thereon.

Prior thereto, or as early as 1948, the need for a high school in Sagay had been felt. A committee created to enter into negotiations for the acquisition of a high school site achieved no tangible results. However, on January 11, 1950, defendants Dolores Lopez Vda. de Jison and Januario L. Jison executed the deed Exhibit 4, donating to plaintiff herein a portion of Lot No. 547, containing eight (8) hectares. This portion—identified in appellants' subdivision plan Exhibit 12, as Lot No. 547–A—is West of the one involved in the case at bar, which is marked as Lot No. 547–B. Unlike the latter, said Lot No. 547–A does not adjoin any road. It is about 40 meters from the national highway, from which it is separated by strip of land, of said width, forming part of Lot No. 547. For this reason and because said Lot No. 547–A has a rolling terrain, the division superintendent of schools objected thereto as unsuitable for high school purposes and, eventually, plaintiff declined to accept the donation (Exh. I). Inasmuch as another committee created to negotiate with the Jisons, failed to reach any agreement with the latter, in August, 1951, the municipal council of Sagay sought and, thereafter, obtained, from the Provincial Board and the Office of the President, the necessary authority for the institution of the present expropriation case, which was filed soon later (Exhs. J, L, M and N).

The plan to establish and operate a high school was thus known since the year 1948. It was particularly known to defendants Dolores Lopez Vda. de Jison and Januario L. Jison, for on January 11, 1950, they executed the deed Exhibit H, donating Lot No. 547–A to plaintiff herein, for high school site, which donation had been preceded by negotiations lasting for some time. In fact, on April 19–20, 1949—or almost 4 months *before* the first sale to the Roman Catholic Bishop of Bacolod—the Jisons had caused Lot No. 547 to be surveyed for the preparation

of the subdivision plan Exhibit 12, indicating thereon Lot No. 547–A, which was intended to be donated for "high school site." The high school project, in turn, contributed substantially to the sudden and unusual increase in the price of real estate in the locality. We are not satisfied, therefore, that the sales evidenced by Exhibits 5, 6, 8, 9, 10 and 11 were made in the ordinary course of business. Indeed, considering that the assessed value of Lot 547 in 1951, was ₱0.04 a square meter, and in 1953, ₱0.06 a square meter, the aforementioned sales at rates ranging from ₱2.00 to ₱4.80 are understandable only in the light of the speculation prompted by the plan to establish in the barrio of Dalusan a new high school. Such were the benefits expected therefrom, that even the Jisons were willing to part, free of charge, with eight (8) hectares of land, constituting Lot No. 547–A, provided that the same was used exclusively for the operation of said high school.

With respect to the effect, upon the nature of Lot No. 547–B, of three (3) roads (one of which is of private ownership) on three (3) sides thereof, His Honor, the Trial Judge, has aptly observed:

"* * * Es un hecho de conocimiento publico que a lo largo de la carretera provincial desde la ciudad de Bacolod hasta el municipio de San Carlos, por el Norte, y desde dicha ciudad hasta el municipio de Cauayan, por el Sur, una distancia combinada de alrededor de trescientos kilometros, grandes y extensas haciendas de cañadulce se extienden por ambos lados, y alguna que otras casa-hacienda y grupos de caserios de los obreros que trabajan en ellas se levantan en dichas haciendas, y ciertamente que nadie pretendera clasificar las mismas como terrenos residenciales, por el solo hecho de bordear con la carretera provincial. La circunstancia alegada de que el barrio Dalusan se ha convertido recientemente en la nueva poblacion y de que la carretera bordea el lote en controversia por sus tres costados, en opinion del Juzgado, constituiria por lo mas, una razon valida y poterosa para aumentarle de valor dentro de su categoria de terreno agricola." (Record on Appeal, pp. 46–47.)

Indeed, the value of the property expropriated should be determined by, among other factors, its character at the time of the *taking* "and not as *potential* building" site (Manila Electric Co. *vs.* Tuason, 60 Phil., 663, 668). In short, if Lot No. 547–B was *agricultural* in 1953, the adaptability thereof for conversion *in the future* into a residential site does not affect its nature when plaintiff assumed possession of the property, although it is a circumstance that should be considered in determining its value at that time, as an "agricultural" land.

Upon consideration of all the facts and circumstances surrounding the case, we are of the opinion, therefore, that the reasonable value of Lot No. 547–B may be, as

it is hereby, fixed at ₱3,000 per hectare, or ₱24,000 for the entire lot. Having received already the sum of ₱20,000, appellants are consequetly, entiled to collect the balance of ₱4,000, with interest thereon at the rate of 6% per annum, beginning from August 12, 1953.

Modified accordingly, the decision appealed from is hereby affirmed in all other respects, without special pronouncement as to costs.

IT IS SO ORDERED.

Parás, C. J., Bengzon, Padilla, Montemayor, Labrador, Reyes, J. B. L., and *Endencia, JJ.,* concur.

Judgment affirmed with modification.

[No. L-10694. March 20, 1958]

MULLER & PHIPPS (MANILA), LTD., petitioner and appellant, *vs.* THE COLLECTOR OF INTERNAL REVENUE, respondent and appellee.

1. TAXATION; REFUND OF TAXES; PRESCRIPTIVE PERIOD OF ACTION FOR REFUND.—The two-year period of limitation prescribed in Section 306 of the Tax Code applies only to actions to recover (1) "any—tax alleged to have been *erroneously* or *illegally* assessed or collected", or (2) "any penalty—collected without authority", or (3) "any sum—wrongfully collected." Said period of limitation can not apply to cases where, as in the instant case, the taxes so assessed, collected and paid were legitimately due, and were not wrongfully or erroneously collected, but, by reason of some supervening circumstances, the taxpayer became entitled to a partial refund of the taxes previously paid. The law applicable, therefore, is Section 11 of Act No. 1125, since the latter Act (section 7) conferred upon the Court of Tax Appeals the exclusive jurisdiction to review by appeal decisions of the Collector of Internal Revenue in cases involving refund of internal revenue taxes.

2. PLEADING AND PRACTICE; MOTIONS FOR RECONSIDERATION; PRACTICE OF DEDUCTING TIME USED IN CONSIDERING IT, APPLICABLE TO ADMINISTRATIVE CASES.—The practice of permitting motions for reconsideration and deducting the time used in considering it, applies to administrative cases, being in consonance with the principle of exhaustion of administrative remedies (Libuet *vs.* Auditor General, L-10160, June 28, 1957).

REVIEW of an order of the Court of Tax Appeals.

The facts are stated in the opinion of the Court.

Balcoff & Poblador for petitioner and appellant.

Solicitor General Ambrosio Padilla, Assistant Solicitor General José P. Alejandro and *Special Attorney Luz P. Santos* for the respondent and appellee.

REYES, J. B. L., *J.:*

Petitioner Muller & Phipps (Manila), Ltd. is engaged, among other things, in the manufacture of Kolynos Toothpaste and for this purpose imports raw materials from the Home Products International, Ltd. in New York, U. S. A. Sometime in 1951 and 1952, petitioner imported Kolynos essence, powdered soap, and calcium carbonate for manufacture into Kolynos Toothpaste and, in accordance with sec. 183(B) of the National Internal Revenue Code, paid the advance sales taxes on said raw materials upon their withdrawal from customs custody on September 9, 1951 and January 19 and 22, 1952. Because of the lack of packaging materials, however, petitioner was not able to use all of said raw materials so that on July 27, 1953, it shipped back to its supplier in the United States the unused materials to prevent their deterioration.

On August 4, 1953, ten days after the return of the unused raw materials to the United States, petitioner filed with the Collector of Internal Revenue a claim for the refund of the amount of ₱4,453.25 representing advance sales taxes paid on said goods. The Collector denied the claim by letter of January 25, 1955, received by petitioner on February 7, 1955. On February 22, 1955, appellant filed a request for a reconsideration of the Collector's denial of its claim, which request was denied on November 3, 1955 and copy of the denial was received by petitioner on November 10, 1955. On November 23, 1955, petitioner filed a petition for review with the Court of Tax Appeals.

In the Court of Tax Appeals, the Collector moved to dismiss petitioner's petition for review on the ground that it was filed beyond the two-year prescriptive period provided for in sec. 306 of the Tax Code. The court found this motion meritorious and dismissed the petition for lack of jurisdiction. Petitioner moved for reconsideration, which was denied. Wherefore, petitioner appealed to this Court by petition for review.

It is the contention of appellant that the two-year period of limitation prescribed in sec. 306 of the Tax Code has been impliedly repealed by Rep. Act 1125 creating the Court of Tax Appeals; that its period to file a court action for refund within two years under sec. 306 of the Tax Code must be computed from the time it returned the unused materials to the United States, which was the time its cause of action to ask for refund accrued; that consequently, it had not yet lost its right of action when Rep. Act 1125 came into effect; and that therefore, it could pursue its remedy in accordance with the procedure laid down by Rep. Act 1125, which was to appeal to the Court of Tax Appeals within thirty days from receipt of the decision or ruling of the Collector denying its claim for refund.

Sec. 306 of the Tax Code provides:

"Sec. 306. *Recovery of tax erroneously or illegally collected.* No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Collector of Internal Revenue; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress. *In any case, no such suit or proceeding shall be begun after the expiration of two yeras from the date of payment of the tax or penalty.* (Italics supplied)

We think it plain that the provisions of section 306 do not apply to appellant's case. By its terms, the two-year limit established by said section applies only to actions

to recover (1) "any—tax alleged to have been *erroneously* or *illegally* assessed or collected", or (2) "any penalty—collected *without authority*", or (3) "any sum—*wrongfully collected*". In such cases, as held by us in the case of P. J. Kiener & Co. Ltd. *vs.* David (G. R. No. L–5163, April 22, 1953) and the recent one of College of Oral and Dental Surgery *vs.* Court of Tax Appeals (G. R. No. L–10446, January 28, 1958), the taxpayer must file action within 2 years from payment of the tax, and need not wait for a decision of the Collector on his claim for refund before taking the matter to court. The reason is that the inaction of the Collector upon the taxpayer's claim for refund of the taxes paid, constitutes or may be construed as a reaffirmation of the original action taken by him, which the taxpayer claims to be erroneous or wrongful; and such original action can be subjected to court review, without awaiting its affirmance by the Collector.

But the case of appellant Muller & Phipps (Manila) Ltd., is entirely different. Here, the original action of the Collector in assessing advance sales tax on the imported raw materials is not challenged. Appellant admits that the taxes so assessed, collected and paid in 1951 and 1952 were legitimately due, and were not wrongfully or erroneously collected. The taxpayer's position is that, by reason of supervening circumstances (i.e., the reexportation of part of the imported materials), it subsequently became entitled to a partial refund of the taxes previously paid. Therefore, until the Collector rejected that claim for refund, the taxpayer had no cause of action. Before such rejection, there was no ruling or action of the Collector that the taxpayer could contest or submit to a review; wherefore, no prescriptive period could begin to run until and unless the Collector refused to make a refund. Thus, the prescriptive period of two years *from payment,* fixed by sec. 306 of the Tax Code, can not apply to the present case.

Since Republic Act No. 1125, sec. 7, conferred upon the Court of Tax Appeals exclusive jurisdiction to review by appeal decisions of the Collector of Internal Revenue in cases involving refunds of internal revenue taxes, the law applicable to appellant's case is sec. 11 of said Act No. 1125:

"SEC. 11. *Who may appeal; effect of appeal.*—Any person, association or corporation adversely affected by a decision or ruling of the Collector of Internal Revenue, the Collector of Customs or any provincial or city Board of Assessment Appeals *may file an appeal in the Court of Tax Appeals within thirty days after the receipt of such decision or ruling.*

No appeal taken to the Court of Tax Appeals from the decision of the Collector of Internal Revenue or the Collector of Customs shall suspend the payment, levy, distraint, and/or sale of any

property of the taxpayer for the satisfaction of his tax liability as provided by existing law; *Provided, however,* That when in the opinion of the Court the collection by the Bureau of Internal Revenue or the Commissioner of Customs may jeopardize the interest of the Government and/or the taxpayer the Court at any stage of the proceeding may suspend the said collection and require the taxpayer either to deposit the amount claimed or to file a surety bond for not more than double the amount with the Court." (Italics supplied)

The record shows that refund was denied only on February 7, 1955. Fifteen days later, on February 22, 1955, appellant sought a reconsideration, and notice of its denial was received on November 10, 1955. Thirteen days afterwards, on November 23, 1955, the case was appealed to the Court of Tax Appeals. Since pursuant to our ruling in Libuet *vs.* Auditor General, G. R. No. L–10160, June 28, 1957, the practice of permitting motions of reconsideration and deducting the time used in considering it, applies to administrative cases, being in consonance with the principle of exhaustion of administrative remedies, the appeal of the taxpayer in the case before us must be regarded as taken only twenty-eight days after the Collector's denial of the refund sought (discounting the period between February 22, 1955 to November 23, 1955 when the reconsideration was pending). The appeal was therefore taken well within the thirty-day period provided by sec. 11 of Republic Act No. 1125.

From the foregoing it is readily apparent that the Court of Tax Appeals had jurisdiction over the case; and it was error for it to dismiss the taxpayer's appeal for want of jurisdiction.

WHEREFORE, the order of dismissal appealed from is reversed, and the records are ordered remanded to the Court of Tax Appeals with direction to proceed to hear the same, and decide it on its merits. Without costs.

IT IS SO ORDERED.

Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepción, Endencia, and *Félix, JJ.*, concur.

Order reversed.

DECISIONS OF THE COURT OF APPEALS

[No. 16595-R. February 16, 1959]

MAXIMIANA BATABAT, ET AL., plaintiffs and appellees, *vs.* ISIDORO BATABAT, defendant and appellant

CO-OWNERSHIP; REPURCHASE OF COMMUNITY PROPERTY BY ONE CO-OWNER BENEFITS ALL CO-OWNERS; EFFECT WHEN FIDUCIARY FUNDS ARE USED IN THE RE-PURCHASE.—The repurchase by one co-owner from a purchaser at public auction of community property inures to the benefit of all the co-owners. And where said co-owner standing in a fiduciary relation uses fiduciary funds or assets in the purchase of property in his own or a third person's name a resulting trust arises (65 C. J. 365).

APPEAL from a judgment of the Court of First Instance of Zamboanga del Norte. Ortega, *J.*

The facts are stated in the opinion of the Court.

Barrera & Peyton, for defendant and appellant.
Malcolm G. Sarmiento, for plaintiffs and appellees.

DE LEON, *J.:*

The original owner of the properties in question, designated as Lots Nos. 3561 and 3562 of the Dipolog cadastre, Zamboanga del Norte, was Bernardo Batabat who died intestate on May 28, 1931, leaving the following heirs: his second legal wife, Honorata Ortega, who died in July, 1952; plaintiffs Maximiana and Felipe and defendant Isidoro, children of the first marriage; and plaintiffs Maximino and Rosario and the late Aniceto, who died single in 1951, children of the second marriage. It appears, however, that in 1929, or during the lifetime of Bernardo Batabat, the latter had sold contiguous portions of the two lots to Nemesio Acas and his father, Maximo, with the right of repurchase within a period of 2 years, but that Bernardo died without exercising this right.

According to the plaintiffs, after the death of Bernardo, Isidro was allowed to possess and cultivate the lots as the oldest child of Bernardo, and that this arrangement had the approval of Nemesio Acas so as to enable Isidoro to raise money with which to pay the land taxes and redeem the lots. Upon the other hand, Isidoro Batabat claimed that upon the death of his father he was hired as the tenant of Nemesio Acas for a portion of the lots Nemesio and his father had acquired in the *pacto de retro* sale; that in 1934 he discovered that the Acases were possessing an area very much more than what was conveyed to them in 1929, so that thereafter he refused to recognize the Acases as owners of any portion of the lots;

that he was sued by Nemesio Acas for his refusal to recognize the latter as owner of the lot which he was cultivating as tenant and to deliver Nemesio's share in the products (Civil Case No. 569, Court of First Instance of Zamboanga del Norte); that he lost in that case and he was ordered to give back to Nemesio an area planted to 100 coconut trees; that he continued exercising absolute ownership over the properties to the exclusion of his brothers and sisters as co-owners, by wholly enjoying the products raised on the land, and mortgaging the said lot first to Tomas Jarmen in 1934 in order to pay his lawyers in Civil Case No. 569, and again to one Mrs. Soto in 1940 to pay his mortgage debt to Tomas Jarmen.

In August, 1941, the lots in question were sold at public auction to Pacifico Lara due to Tax delinquency (Exhibit 2). From 1941 to 1946, defendant Isidoro Batabat continued in possession of the properties supposedly as tenant of Lara. On January 31, 1946, appellant bought the lands from Lara for ₱165.00 (Exhibit 1). In 1948, Isidoro declared the lands in his own name (Exhibits 9 and 10), and paid the taxes therefor (Exhibits 11 to 11–3). The plaintiffs learned in the same year that Isidoro had declared the lands in his own name, hence the complaint in this case, dated October 15, 1948, which was filed in court on June 28, 1950.

After trial, the lower court (1) dismissed the claims of the defendant, (2) ordered the partition of the lots and their improvements into five equal parts among the plaintiffs and the defendant, and (3) condemned the defendant to pay the sum of ₱7,861.30 to the plaintiffs as their share in the products of the lands up to December, 1954, when the lands were placed under a receivership.

Not satisfied, the defendant has interposed this appeal, reiterating the claims of exclusive ownership of the two lots through adverse possession and purchase for a valuable consideration.

Nemesio Acas testified for the plaintiffs. He affirmed that upon the death of Bernardo Batabat in 1931 he had agreed to extend the period within which the plaintiffs could redeem the lots and, for that purpose, consented to the agreement of the parties to allow Isidoro Batabat to possess and cultivate the lands in order to enable Isidoro to pay the land taxes and to redeem the portion of the lots mortgaged. Thus, Nemesio declared as follows:

"Q. Will you please inform this Court the circumstances how Isidoro Batabat happened to possess the land after the death of his father?

A. After the death of their father, I informed them that there is a document which will expire in two years, because before the expiration of the term, it was agreed among the brothers and sisters

that Isidoro Batabat should be the one to take possession of the land in order that the money the amount should be raised to redeem the property from me.

* * * * * * *

Q. Because of the pacto de retro sale shown in Exhibit 3 in your favor of your father by the late Bernardo Batabat in the year 1929, do you remember if you have entered an amicable settlement wherein you ceded to the plaintiff over this land as shown in this contract?

A. There was an agreement after the death of their father wherein the extension of the time limit was extended as they could not pay the rest of the amount." (pp. 57, 61, February 16, 1955).

Nemesio's father, Maximo, died in March, 1954. On August 11, 1954, Nemesio Acas and Maximino and Maximiana Batabat signed an agreement, now in the record of this case as Exhibit H. This document was identified by Nemesio Acas in court, as follows:

"Q. Do you remember that on August 11, 1954, an agreement was entered into between you and these plaintiffs Maximino Batabat and Maximiana Batabat as shown in this document as Exhibit H wherein you waived all your rights and interest, if any, to this portion?

A. Yes, sir, there was.

Q. And this is the one?

A. This is the one." (p. 61, Feb. 16, 1955).

but its contents disclose that the heirs of Bernardo Batabat have not fully paid the redemption price of the portion of the lots mortgaged to Nemesio and Maximo Acas.

The defendant-appellant, Isidoro Batabat, claims that he has been in the adverse possession of the two lots in question, to the exclusion of his brothers and sisters, since the year 1934. This contention is not borne out by the evidence of record. Its falsity is furthermore betrayed by the appellant's own declarations in court. For instance, the appellant said that sometime in August, 1941, after the sale of the lots at public auction, he asked his brother, Maximino, why the latter did not sell the *carromata*, carabao and lumber in order to raise money with which to pay the taxes. He also divulged that before he bought the lots from Pacifico Lara in January, 1946, he told his brothers and sisters that Lara was willing to sell the lands to all of them but the herein plaintiffs supposedly told him that they were no longer interested in the lands. These declarations of Isidoro certainly militate against his claim of open and adverse acts of possession in repudiation of the rights of his co-owners. Upon the other hand, the appellees' version that Isidoro was allowed to possess and cultivate the lands in order to enable him to raise money with which to pay the taxes and to redeem the portion of the same lots mortgaged to the Acases was fully supported by the testimony of Nemesio Acas.

Neither does Isidoro's purchase of the lands from Pacifico Lara vest him with exclusive and legal title thereof. In the first place, Lara was an employee of the Municipal Treasurer's Office of Dipolog at the time of the sale to him of the lands at public auction. Pursuant to Section 579 of the Revised Administrative Code, he was inhibited against purchasing the lots at the public auction (Punzalan *vs.* Ascaño, G. R. No. L–9303, July 11, 1957). In the second place, it was clearly established that the money used by Isidoro with which to buy the lands from Lara came from a loan extended by one Mrs. Soto and obtained by Isidoro by mortgaging a portion of Lot No. 3561 as security thereof. Be this as it may, the purchase made by Isidoro from Lara, even assuming that the public auction in favor of said Lara was valid, inured to the benefit fo all the co-owners. Where a person standing in a fiduciary relation uses fiduciary funds or assets to purchase property in his own or a third person's name a resulting trust arises (65 C. J. 3654). Upon the above facts, the court *a quo* certainly did not abuse its discretion in appointing a receiver for the properties of the parties (Lama *vs.* Apacible, G. R. No. L–1387), August 7, 1947, 45 Off. Gaz., January, 1949, p. 280), and in holding the appellant answerable for all the products of the lands appropriated by him since January, 1946.

The appellant also argues that the lower court erred in ordering a partition of the properties in five equal parts among plaintiffs Maximiana, Felipe, Maximino and Rosario and defendant Isidoro, saying that since the court below found that the two lots in question were acquired during the first marriage, Isidoro, Maximiana and Felipe should receive more than Maximino and Rosario, the children of the second marriage. This is correct. Upon the death of Bernado's first wife, Luisa Polanco, during the Spanish regime, one-half of the two lots belonged to Bernardo, and the other half, that belonging to Luisa Polanco, to the children of the said married couple, Isidoro, Maximiana and Felipe, as the lawful heirs of their mother. Inasmuch as the property continued undivided between Bernardo, on the one hand, and his above-named children, on the other, and as the conjugal partnership had terminated, a community of property maintained the father and the children in the joint dominion (Art. 392, Civil Code). By the second marriage, three additional children survived the father, and upon the death of the father, the first three children, together with the surviving children of the second marriage, became his heirs, and all are entitled to divide the said half share belonging to their common father into six parts (Art. 931, *supra*). In view of these con-

siderations, nine-twelfths should be apportioned among the children of the first marriage—to wit, 6 as their own, already inherited from their mother, Luisa Polanco, and three subsequently inherited from their deceased father, Bernardo Batabat, while the remaining three ap-Pertain to the children of the second marriage as their own share in the estate of Bernardo Batabat. However, upon the death of Aniceto in 1951, his corresponding share passed to his 2 full-blood brother and sister as well as to his three half-blood brothers and sister in the proportion of two-sevenths for each of the former and one-seventh for each of the latter.

WHEREFORE, the decision appealed from is hereby modified as above-indicated with respect to the share that each of the parties shall share in lots Nos. 3561 and 3562 and their improvements and products, and is hereby affirmed in all other respects, with costs against the appellant. SO ORDERED.

Makalintal and *Castro, JJ.*, concur.

Judgment modified.

[No. 20226-R. March 11, 1959]

Summary Distribution of the Estate of the Deceased DOMINGO DE LA CRUZ: LUCILA AGUIRRE, petitioner and appellee, *vs.* ESPERANZA CRUZ, ET AL., oppositors and appellants.

WILL; PROBATE; SUBSCRIBING WITNESSES.—It is a fundamental rule that the proof of the execution of a will does not depend merely upon the memory of the subscribing witnesses. A subscribing witness need not recollet the particulars attending the execution of the will, it being sufficient if he identifies his signature and feels assured in his own mind that he would not have affixed it without first hearing the will acknowledged (28 R.C.L. p. 373).

APPEAL from a judgment of the Court of First Instance of Bulacan. Mencias, *J.*

The facts are stated in the opinion of the Court.

Eulalio Chaves, Victoriano H. Endaya and *Corona Villafuerte-Venal,* for oppositors and appellants.

Julian T. Ocampo, for petitioner and appellee.

DE LEON, *J.:*

Petition for the probate of the alleged will of Jose Domingo de la Cruz and the summary distribution of his estate with a gross value of about ₱3,000.00 in accordance with the will. The petition is opposed by Esperanza Cruz, et al., on the grounds that the properties left by the deceased were worth more than ₱10,000.00; that the alleged will (Exhibit B) does not bear the true and genuine thumbmarks of the decedent or, if genuine, the same were obtained through fraud, undue pressure and influence; and that the decedent was mentally incapable of making the will at the time or on July 10, 1954. The petition was also opposed by Fernanda Santos who claimed ownership of some of the properties included in the alleged will.

The Court of First Instance of Bulacan, after trial, admitted the will (Exhibit B) to probate, and Esperanza Cruz, et al., have come to this Court to contest that Court's judgment.

The court *a quo* made a fair and accurate resume of the evidence of the parties as follows:

"From the evidence submitted in support of the petition it was established that Domingo dela Cruz died in his home located in barrio Lumbac, Pulilan, Bulacan, on September 10, 1954, leaving real properties; that at the time of his death he was a widower, and his nearest relatives who survived him were the petitioner Lucila Aguirre and the oppositors surnamed Cruz or De la Cruz, eighteen in number, who were either nephews and nieces or grandnephews and grandnieces of the deceased; that some two or three days before July 10, 1954, the deceased who had for a long time been already suffering from cancer of the kidney sent for one Juan

Espino, who was at the time the Municipal Secretary of Pulilan, Bulacan, and that upon Espino's arrival at the home of the deceased, the latter told him that he wanted to execute a will and wanted a lawyer to prepare the same; that Espino then suggested the name of the Justice of the Peace of said municipality, Atty. Alfredo V. Granados, to prepare the will and the old man having consented to the suggestion, Espino returned to the municipal building to see and talk with Judge Granados regarding the matter. As the Judge was then conducting a preliminary investigation, Espino waited until the investigation was adjourned; that he and Judge Granados then went to see and talk with the old man; that after Judge Granados was requested to prepare the old man's will, the latter furnished the former with data for its preparation such as the properties to be the object thereof, the persons to whom the said properties would be bequeathed or devised and how said properties would be apportioned; that the next day Judge Granados returned to the home of the deceased in order to ascertain further if the deceased was really of sound and disposing mind and that he had not changed his mind; that Judge Granados having been satisfied that the old man was mentally sound and had not changed his mind, drafted the document, Exhibit "B", the next day which was a Saturday in the afternoon in the Pulilan Municipal Building and sent for the residence certificates of the persons who were going to be the attesting witnesses and whose names had been already furnished to him so that said names had the data appearing in the residence certificate could be included in the document; that he also bought a residence certificate for the old man for the purposes of the acknoledgment; that in the evening of said day which was July 10, 1954, after the document had been typed Judge Granados brought it to the home of Domingo dela Cruz and there at his request it was read to him by Ricardo Cruz in the presence of Juan Espino, Fausto Aguirre, Judge Granados, Dr. Pablo Espino and Cornelio de Jesus; that the old man having been satisfied with the contents of the document, he affixed his thumbmarks with the aid of Ricardo Cruz on the margin of each and everyone of its five pages, the last of which contained the acknowledgment; that the old man also affixed his thumbmark on the bottom of the said document on page 4 thereof, after which and upon his request attesting witness Ricardo Cruz wrote his name, Domingo dela Cruz, below the thumbmarks; that the deceased affixed his thumbmarks in the presence of the attesting witnesses as well as of Judge Granados, Dr. Espino and Cornelio de Jesus and thereafter the attesting witnesses Ricardo Cruz, Juan Espino and Fausto Aguirre, in the order named, affixed their signatures on the left-hand margin of each page and at the bottom of the attesting clause thereof in the presence of each other and in that of the testator, the notary, Dr. Espino and Cornelio de Jesus.

"It was further established that, after the document had been thumbmarked and signed by the attesting witnesses, Judge Granados signed its acknowledgment then, sometime later he brought the document to the municipal building to be sealed with his notarial seal. It was also disclosed that because the old man's residence certificate was brought that afternoon when the office of the Municipal Treasurer was already closed for business and its statement of collection for the day had already been closed the employee who sold the said residence certificate, Juan Santos, wrote as its date of issue the date of the next working day, Monday, July 12, 1954. It was further established that before

the execution of the will the deceased executed another document, a deed of sale in favor of Dr. Pablo Espino, covering several parcels of land and that the said deed of sale was likewise acknowledged before Justice of the Peace Granados.

"All the attesting witnesses as well as Judge Granados who were presented to testify on the execution of the will, more or less, substantially corroborated each other as to the manner of the execution of the will as well as the order of the witness in the signing of the same. Their testimony also established the fact that at that time the old man, altho sick, had still a clear mind and understood the contents of the will, and was aware of what was going on, thereby showing that he was still mentally sound.

"The evidence also established that the deceased knew how to read and write, but because at the time of the execution of the will his hands continuously trembled, he decided to thumbmark it and after he had affixed his thumbmarks he requested Ricardo Cruz to sign his name for him below his thumbmarks on the document which were done as shown by the said document.

"The evidence for the oppositors established that Domingo de la Cruz long before September 8, 1954, had already been suffering from cancer of the kidney but he did not stay in a hospital except in August 1954, after the will was executed already; that notwithstanding his sickness he could still move around the house and sometimes could go to the fields; that from April to August 1954, he had been visited frequently by his relatives among whom was Esperanza Cruz and that in one of these visits in August he requested his visitors to count a bundle of bills which he had amounting to ₱6,000.00."

The oppositors-appellants insist that the thumbmarks appearing on the will (Exhibit B) are not those of the late Jose Domingo de la Cruz. Exhibit B is a public document, having been executed through the intervention of a notarial officer, pursuant to a new requirement of the present Civil Code. As such, the burden is on the appellants to establish their contention. As correctly commented by the probate court, " the oppositors did not present evidence to show that the thumbmarks were not those of the deceased." Their bare assertions, therefore, can not certainly offset the positive and competent testimonies of the attesting witnesses and the notary public. It was shown that the deceased knew how to read and write, but it was also satisfactorily established that the testator was then already old and sickly and his hands continuously trembled, so that he decided to affix his thumbmark instead and requested Ricardo Cruz, one of the instrumental witnesses, to sign his name for him below his thumbmarks.

The notarial officer, Justice of the Peace Alfredo V. Granados of Pulilan, Bulacan, and the attesting witnesses, Ricardo Cruz, Fausto Aguirre and Juan Espino, all declared that the testator was of sound and disposing memory at the time of the execution of the will and that no influence or pressure of any kind was used on the

testator. Of these witnesses, the trial court commented that they are "all men of good reputation because one was the Municipal Secretary of Pulilan at that time and now Mayor of the said municipality and the other was an employee of this Court." The oppositors declared that in July, 1954, the testator was not yet very sick, and as aptly concluded by the lower court it could be inferred that on July 10, 1954, the testator was of sound and disposing mind. All the subscribing witnesses testified that the decedent affixed his thumbmarks on each and every page of the will personally and in their presence and they too signed each and every page of the will after the testator, in his presence, and in the presence of all of them. They identified Exhibit B as the same will executed by Jose Domingo de la Cruz, as well as the thumbmarks of the testator and their signatures appearing thereon. Adverting to alleged inconsistencies in the declarations of the petitioner's witnesses brought to the attention of the court below and reiterated in this appeal, the court *a quo* said that these referred to minor particulars which did not affect the credibility of the witnesses. Indeed, the alleged contradictions dwell on unimportant details such as the precise position of the testator, the number of copies of the will, the number of lamps inside the room, and where the will was placed at the time the testator affixed his thumbmarks. It is a fundamental rule that the proof of the execution of a will does not depend merely upon the memory of the subscribing witnesses. A subscribing witness need not recollect the particulars attending the execution of the will, it being sufficient if he identifies his signature and feels assured in his own mind that he would not have affixed it without first hearing the will acknowledged (28 R.C.L. p. 373). The appellants also call our attention to the fact that while the will was executed on July 10, 1954, the residence certificate of the testator indicated on the acknowledgment was issued on July 12, 1954. Judge Granados, who prepared the will and procured the residence certificate for the signature of the testator, gave an explanation for this which we find plausible:

"From the testimony of the Notary Public, Judge Alfredo V. Granados, who will prepare the will and before whom it was acknowledged, the was typewritten by him in final form around 3:00 o'clock in the afternoon of July 10, 1954, which was a Saturday. In the course of the preparation of said document and as he had already been told before who were to be the attesting witnesses, he sent for their residence certificates so that he could insert their serial numbers and other data in the acknowledgment. In the course of said preparation the residence certificates of the attesting witnesses were brought to him and from then the obtained the data which appear in the acknowledgment. At that time, however, according to him, Domingo de la Cruz did not have a

residence certificate so he had one bought for him and inserted the serial number thereof in the acknowledgment and placed therein as its date of issue July 10, 1954. According to the clerk who issued the said residence certificate, Judge Granados was the one who bought it but since the offices of the Municipal Treasurer had already been closed and that the said officer had given instructions to his employees that any document issued after the closing of office hours and after the accounts for the day have already been closed must be dated the next working day, he dated the residence certificate of the next working day which was Monday, July 12, 1954, notwithstanding the fact that it had bought and paid for in the afternoon of Saturday, July 10, 1954. According to him also, he brought the said residence certificate that same afternoon to the home of Domingo de la Cruz who was his neighbor for the necessary affixing thereto of his thumbmark."

The propriety of this action for summary distribution is assailed on the ground that the gross estate of the decedent at the time of his death was allegedly over ₱6,000.00, the limit allowed by law to be distributed summarily (Section 2, Rule 74, Rules of Court), because on July 10, 1954, the decedent received ₱7,000.00 from Dr. Pablo Espino representing the proceeds of the sale of a parcel of land in favor of said Dr. Espino. The testator died on September 10, 1954. The value of the estate of a deceased person is determined as of the time of his death. In the instant case, there is no evidence that the sum of ₱7,000.00 or so much thereof remained in the possession of the decedent when he died.

WHEREFORE, no reversible error having been committed, the judgment appealed from is hereby affirmed in all its parts, with costs.

SO ORDERED.

Makalintal and *Castro, JJ.*, concur.

Judgment affirmed.

[No. 16030-R. March 20, 1959]

AGAPITO NIETO, petitioner and appellant *vs.* ALEJO AQUINO, in his capacity as City Engineer of the City of Manila, respondent and appellee.

PUBLIC NUISANCE; SUMMARY ABATMENT; CITY ENGINEER EMPOWERED TO DETERMINE PUBLIC NUISANCE.—The City Engineer of the City of Manila is empowered to determine and declare whether or not a property within the city constitutes a public nuisance *per se* and to summarily abate said nuisance without judicial proceedings and without payment of compensation to the owner for the value of the property.

APPEAL from a judgment of the Court of First Instance of Manila. Tan, *J.*

The facts are stated in the opinion of the Court.

Eustaquio Sto. Domingo, Avelino M. Constantino & Manuel P. Dumatol, for petitioner and appellant.

City Fiscal Eugenio Angeles and *Assistant Fiscal Manuel T. Reyes,* for respondent and appellee.

NATIVIDAD, *J.:*

This action of injunction, instituted by the petitioner, Agapito Nieto, against the respondent, Alejo Aquino, as City Engineer of the City of Manila, to restrain the latter from enforcing his order for the summary removal of the former's house which stands on the area of P. Noval street, Manila, is now before this Court on the appeal interposed by said petitioner from a judgment of the Court of First Instance of Manila, dismissing his petition and dissolving the preliminary injunction theretofore issued, with costs.

The evidence discloses that the petitioner is the owner of a certain house of mixed materials, bearing No. 587, about three-fourth of which is standing on the area of P. Noval street, Manila, and is obstructing the free passage of vehicles on that street; that P. Noval street is the property of the City of Manila dedicated to public use as a public street, and the same appeared drawn in the plan of the City of Manila as a street since prior to the year 1906; that on July 5, 1952, the respondent, pursuant to the policy of the administration to restore to lawful use the public streets in the city, addressed to the petitioner a letter advising him that his house was standing on a public street and constituted a public nuisance, and that the same must be removed on or before November 28, 1953; that this letter was received by the petitioner on October 28, 1953; and that because of the failure of the petitioner to remove his house within the period given him for the purpose, the respondent sent him futrher letters demanding compliance with his order, but the petitioner ignored these letters, and, instead, on March 9, 1955, commenced this action.

It is contended by petitioner that the trial court committed error in finding that his house constitutes a public nuisance, and that the respondent has authority to declare it as such and summarily demolish it without prior judicial or administrative hearing and payment of the corresponding compensation, and in dismissing his petition. It is claimed that petitioner built this house on a lot formerly belonging to the Sta. Clara Estate which is his now, under a permit issued to him by the City Engineer in the year 1906; that then the present P. Noval street was not yet constructed, and he believed in good faith that his house did not occupy any part of that street; that he spent ₱350.00 for filling said lot; and that his house is assessed for taxation purposes at ₱400.00.

The issues raised in this appeal need no elaborate discussion on our part. They are covered by the doctrine laid down in the case of Sitchon *vs.* Aquino, 52 Off. Gaz. 1399. In that case, the Supreme Court held:

"Houses constructed, without governmental authority, on public streets and river beds, obstract *at all times* the free use by the public of said places and, accordingly, constitute nuisances *per se*, aside from public nuisances, under Articles 694 and 695 of the Civil Code (Republic Act No. 386). As such, they may be summarily removed, without judicial proceedings, despite the due process clause.

"It is true that Articles 700 and 702 of the Civil Code, empower the district health officer to determine whether or not abatement, without judicial proceedings, is the best remedy against public nuisance. However, section 31 of Republic Act No. 409 (Revised Charter of the City of Manila), specifically places upon the city engineer such duty. Obviously, the provisions of the Civil Code, being general provisions applicable throughout the Philippines, should yield to section 31 of Republic Act No. 409, which is a special provision specifically designed for the City of Manila. Moreover, section 1122 of the Revised Ordinances of the City of Manila (No. 1600) explicitly authorizes the city engineer to remove, at the owner's expense, unauthorized obstructions, whenever the owner or person responsible therefor shall, after official notice, refuse or neglect to remove the same."

It is, therefore, beyond question that the respondent is the official of the City of Manila empowered to determine whether or not a nuisance within the city is a public nuisance, and whether abatement thereof, without judicial proceedings, is the best remedy. And as we analyze the evidence, it is clear that his action herein complained of is warranted. The house in question was constructed by the petitioner on a public street without governmental authority. We cannot believe that this is the very house for the construction of which the permit Exhibit "B" was issued to him on July 28, 1906. The house referred to in that permit was a one-story house

of mixed materials, 5 meters wide and 10 meters long, or 50 square meters in area, to be constructed on No. 19 Int., Tortuosa street. The house in question is located at No. 587 P. Noval street, and has an area of 39 square meters. Tortuosa street is quite far from P. Noval street, and the difference in the area of the two houses is big. It can not be claimed that that house was built by petitioner in good faith. If, as he claims, the lot on which he built his house was the very lot described in the deed of sale Exhibit "A", which he claims is his now, he cannot allege that he did not know he was building on a public street area. This lot, sold to Carmen C. Nieto by the Secretary of Agriculture and Natural Resources on October 6, 1951, is bounded on the northeast by "Road Lot 2 (Calle P. Noval)". It did not include any portion of P. Noval street.

We, therefore, hold that the house of the petitioner-appellant in question constitutes a public nuisance *per se*, and that the respondent-appellee, City Engineer of the City of Manila, is empowered by law to declare it as such and to summarily abate it without judicial proceedings and without payment of compensation to the owner for the value of the same. Consequently, the judgment appealed from is hereby affirmed, with the costs taxed against the petitioner-appellant.

IT IS SO ORDERED.

Sanchez and *Angeles, JJ.*, concur.

Judgment affirmed.

[No. 19187-R. February 9, 1959]

ALHAMBRA CIGAR & CIGARETTE MANUFACTURING COMPANY, plaintiff and appellee, *vs.* INSULAR-YEBANA TOBACCO CORPORATION, defendant and appellant.

1. COMMERCIAL LAW; INFRINGEMENT OF TRADE-MARK OR UNFAIR COMPETITION; TEST OF INFRINGEMENT OF TRADE MARK OR UNFAIR COMPETITION.—In an action for unfair competition or infringement of a trademark, when there are allegations in the complaint for perpetual injunction and there is evidence in the record to support either (E. Spinner & Co. *vs.* Neuss Hesslein Corp., 54 Phil., 224, 226, 230, 233), the existence of variations is no defense (Co Tiong Sa *vs.* Director of Patents, et al., G. R. No. L-5378, May 24, 1954), if from the general appearance of the defendant's products the public would likely be deceived into believing that they are the goods of the plaintiff. The reason lies in the consideration that "When a person sees an object, a central or dominant idea or picture thereof is formed in his mind. Whether in infringement of trademark or unfair competition, the general and universal test is dominancy. Almost always the pertinent inquiry is, are the dominant features of the plaintiff's products so reproduced in the goods of the defendant in such a way as to deceive an ordinary purchaser exercising ordinary care? If in the affirmative, and the other requisites are present, an action for either infringement or unfair competition will lie.

2. ID.; ID.; ID.; EVIDENCE OF INTENT TO IMITATE.—Intent to imitate the plaintiff's product "may be inferred from similarity in the goods as packed or offered for sale to those of the complaining party." (Sec. 7, Act No. 666; Parke, Davis & Co. *vs.* Kiu Foo & Co., Ltd., 60 Phil. 928.).

APPEAL from a judgment of the Court of First Instance of Manila. Gatmaitan, *J.*

The facts are stated in the opinion of the Court.

Sycip, Quisumbing, Salazar & Associates, for defendant and appellant.

Angel S. Gamboa, for plaintiff and appellee.

ANGELES, *J.:*

Plaintiff and defendant, domestic corporation both, are manufacturers of cigars and cigarettes. On October 7, 1955, plaintiff brought this action to perpetually enjoin the defendant from using a cigarette wrapper which, it is alleged, by reason of its distinct similarity to the wrapper of the plaintiff, has given and is giving the goods of the defendant the general appearance of the products of the plaintiff in such a way as is likely to deceive the general public and defraud the plaintiff of its legitimate business. Damages of double the amount of ₱25,000.00 was likewise sought and prayed for by the plaintiff.

The defendant in time filed its answer, specifically denying the material averments of the complaint and asking

by way of counterclaim damages in the amount of ₱20,000.00 and attorney's fees of ₱5,000.00.

After trial, the lower court rendered judgment for the plaintiff condemning the defendant to pay the sum of ₱500.00 as damages and ₱500.00 as attorney's fees, plus costs; enjoining the defendant from using the wrapper Exhibit 'I'; and dismissing the counterclaim.

Defendant appealed.

The plaintiff's wrapper, Exhibit 'B', is protected by a trademark registered on March 27, 1934 in the Mercantile Register of the Bureau of Commerce. In the certificate of registration of the trademark, the wrapper is described as follows:

"In the rectangular section to the left is shown the picture of a lone palm tree above which there appear two words in two lines and in huge types, 'MAHABA' and 'REGALIZ'. Underneath the palm tree is the word 'ALHAMBRA' also in huge types. At the trunk of the tree, close to the ground, there are shown figures and word: to wit, 'A–5–6' and 'Manila', in small types. Running parallel and close to the left edge of the whole major rectangle, the words 'HEBRA SUPERIOR' are shown likewise in capital letters.

"In the other rectangle section to right two words are shown slantingly placed upward to the upper right hand corner in two lines: viz. 'HEBRA' and 'SUPERIOR', in capital types.

"Between the aforesaid two similar rectangular sections, there is a strip in which '30 CIGARILLOS' are shown.

"All or any of the foregoing items of the trademark are and may be stamped, printed, lithographed, drawn, carved, or pasted, on any piece of paper, board, cardboard, tin, wood or other matter, or otherwise attached to the latter.

"The principal features of the trade-mark are the words 'MAHABA REGALIZ', 'HEBRA SUPERIOR,' and the picture of a lone palm tree. The feature 'MAHABA REGALIZ', is not claimed by applicant for its exclusive use, but only in conjunction with the other features."

The plaintiff's cigarettes have been popularly known in the market as "MARCA NIYOG", not only because the wrapper depicts a coconut tree on the face thereof but also because the plaintiff has advertised its product in the local periodicals under that name, as shown by Exhibits C, D, E, O, P and Q.

Sometime prior to February, 1955, the plaintiff discovered that the defendant was selling in the market cigarettes with wrapper bearing the word "MARCA NIYOG, REGALIZ MAHABA" and "HEBRA ESPECIAL" (Exhibit F). Considering the act of the defendant as an unlawful infringement of its trademark and an unfair competition, plaintiff wrote on February 3, 1955 to the defendant in protest, demanding of the latter immediate desistance from the further use of wrappers like Exhibit F, withdrawal from the market of all the products bearing such wrappers, and destruction of all remaining like wrappers. (Exhibit 3–A.) After a follow-up letter dated February 23, 1955

wherein the plaintiff reiterated its demands, the defendant replied stating "that pursuant to the demand made in your letters of February 3 and 23, 1955, * * * we have discarded our old wrappers and adopted a new one to avoid further controversy." (Exhibit H.)

On April 19, 1955, having discovered in the meantime that the new wrapper being used by the defendant, Exhibit 'I', was still an imitation of its trademark, the plaintiff once more protested (Exhibit J), but instead of giving in the defendant suggested arbitration which proposal was turned down, giving rise to the present litigation.

As aptly stated by the lower court, the controversy in the instant case is centered on two cigarette wrappers, Exhibit 'B' of the plaintiff and Exhibit 'I' of the defendant. The principal issue to be determined is whether or not the cigarette wrapper of the defendant tends to pass off the defendant's cigarettes for those of the plaintiff's.

After pointing out the differences between the two wrappers the defendant contended that not even the most careless or illiterate buyer can possibly or would likely confuse the products of the defendant for the cigarettes of the plaintiff, and, therefore, there can be no unfair competition. An examination of the two cigarette wrappers in question reveals that there are indeed some variations between them. On the upper portion of the plaintiff's wrapper, there are the words "MAHABA REGALIZ"; at exactly the same spot on the defendant's wrapper are the words "MARCA NIYOG REGALIZ". The motif on the plaintiff's wrapper consists of a coconut tree with fruits; while that on the defendant's wrapper consists of a large fallen coconut fruit flanked on the left by a coconut tree also with fruits and on the right by a banana plant against a background of a pineapple plantation. Below the motif of the plaintiff's wrapper is the word "ALHAMBRA"; at about the same spot on the defendant's wrapper is the word "MAHABA". At the backside of the plaintiff's wrapper are the words "HEBRA SUPERIOR"; on the corresponding side of the defendant's wrapper are the words "HEBRA ESPECIAL" along with the firm name "INSULAR–YEBANA TOB. CORP." and the address "Tugatog M. Rizal" together with a design illustrating a cluster of tobacco leaves. The firm name and the address are printed in small type letters.

On the other hand, there are also outstanding similarities in the two wrappers. The first thing that will arrest the attention of the casual onlooker is the dark brown color against a white background which is predominant in both wrappers. Also conspicuously featured in both wrappers are the coconut trees and fruits. In size and shape the two wrappers are alike; both are rectangular

in form. Both wrappers are vertically divided into two rectangular sections by a dark brown strip on which appear the figure and words "30 CIGARILLOS", printed in white block letters in identical positions. At the left end of the defendant's label is a dark brown strip on which appear the words "HEBRA ESPECIAL" in lieu of the plaintiff's "HEBRA SUPERIOR", but the words in both wrappers are printed in the same type of huge block white letters against a backdrop of a dark brown strip. On the face of the defendant's wrapper, at the upper portion, are the words "MARCA", "NIYOG" and "REGALIZ", one on top of the other, in that order, and on the base is the word "MAHABA", while in the counterpart section of the plaintiff's wrapper are the words "MAHABA REGALIZ" and "ALHAMBRA"; but all the mentioned words in the defendant's wrapper, like the words in the plaintiff's wrapper, are printed in bold dark brown letters and are enclosed in a continuous line forming a rectangle. At the backside of the defendant's wrapper are the words "HEBRA ESPECIAL", while on the counterpart portion of the plaintiff's wrapper are the words "HEBRA SUPERIOR"; but the said words in the defendant's wrapper, like the words in the plaintiff's wrapper, are printed in dark brown letters in slanting position from the left going upward to the right, and the aforementioned words in both wrappers are enclosed in a continuous line in the form of a rectangle.

By comparing and contrasting Exhibits 'B' and 'I' we found a very striking resemblance between the plaintiff's wrapper and the defendant's label. The few variations pointed out by the appellant are overwhelmed by the distinct similarities revealed. The colors used in the wrapper of the defendant is the same as that used in the plaintiff's. In size, shape, and designs the wrappers are almost identical. The substantial and distinctive features of the plaintiff's wrapper are reproduced in the defendant's label, giving the latter such general appearance as is likely to deceive the ordinary and unwary buyer into believing that the defendant's cigarettes are the plaintiff's products. The coconut trees and fruits are dominant in both wrappers. The words "MAHABA", "REGALIZ" and "HEBRA", although they cannot be considered susceptible of exclusive appropriation by the plaintiff, are in the defendant's label to add to the confusion.

In the face of these strong and striking resemblances, defendant has no satisfactory explanation. Why the dark brown color scheme against a white background? Why the similarity in general features and motif? Why the resemblance in size and type of printed letters on the wrappers? Why the identity in size and shape of the labels? Why the meticulous placing of the words in

exactly the same geometrical positions? Why all these similarities? The logical inference is that they exist for the purpose of deceiving the general public and defrauding the plaintiff of its legitimate trade. "When there are found strong resemblances, the natural inquiry for the court is, why do they exist? If no sufficient answer, the inference is that they exist for the purpose of misleading." (Paris Medicine Co. *vs.* W. H. Rill Co., 102 Fed., 148; Ball *vs.* Siegel, 116 Ill., 137; McLean *vs.* Fleming, 6 Otto, 245; Coats *vs.* Merrick Thread Co., 149 U. S., 562; Josep Dizon Crucible Co., *vs.* Benham, 4 Fed., 527, cited in Forbes, Munn & Co. *vs.* Ang San To, 40 Phil., 272.)

It is true, as pointed out by the appellant, that there are also variations between the two wrappers in dispute. But as above stated, the few differences pale into nothingness in the face of the many points of similarities. Besides, in the action brought by the plaintiff which may be considered either as for unfair competition or infringement of a trademark, there being allegations in the complaint for perpetual injunction and there being evidence in the record to support either (E. Spinner & Co. *vs.* Neuss Hesslein Corp., 54 Phil., 224, 226, 230, 233), the existence of variations is no defense (Co Tiong Sa *vs.* Director of Patents, et al., G. R. No. L–5378, May 24, 1954), if from the general appearance of the defendant's products the public would likely be deceived into believing that they are the goods of the plaintiff. The reason lies in the consideration that "when a person sees an object, a central or dominant idea or picture thereof is formed in his mind. * * * So is it with a customer or purchaser who sees a label. He retains in his mind the dominant characteristics or features or central idea in the label, and does not retain or forgets the attendant decorations, flourishes, or variations. The ordinary customer does not scrutinize the details of the label; he forgets or overlooks these, but retains a general impression, or a central figure, or a dominant characteristic. * * * An ordinary purchaser or an unsuspecting customer who has seen the oppositor's label sometime before will not recognize the difference between that label and applicant's label. He may notice some variations, but he will ignore these, believing that they are variations of the same trademark to distinguish one kind or quality of goods from another." (Co Tiong Sa *vs.* Director of Patents, et al., supra.) Whether in infringement of trademark or unfair competition, the general and universal test is dominancy. Almost always the pertinent inquiry is, are the dominant features of the plaintiff's products so reproduced in the goods of the defendant in such a way as to deceive an ordinary purchaser exercising ordinary care? If in the affirmative,

and the other requisites are present, an action for either infringement or unfair competition will lie.

Upon careful examination of the two wrappers we are of the opinion that the variations pointed out by the appellant were not designed to distinguish its products from those of the plaintiff but to simulate a resemblance and deceive. Applying the language of a federal court, paraphrased by our Supreme Court in the case of Forbes et al. *vs.* Ang San To, *supra,* Exhibit 'I' of the appellant was designed "not to differentiate the goods to which it was affixed, but to simulate a resemblance to plaintiff's goods sufficiently strong to mislead the consumer, although containing variations sufficient to argue about should the designer be brought into court." (Collinsplatt *vs.* Finlayson, 88 Fed., 693.) Which brings us to discussion of the question brought out by the appellant whether or not there is evidence to sustain the conclusion that the defendant designed its wrapper to defraud the plaintiff of its legitimate trade.

Appellant contends that since this is an action for unfair competition wherein the element of fraud is necessary, and inasmuch as the plaintiff was not able to prove fraudulent intent on the part of the defendant, the complaint must be dismissed. As intimated above, this action of the plaintiff seeking to perpetually enjoin the defendant from using its wrapper Exhibit 'I' may be considered as one for unfair competition or infringement of a trademark. The scope of unfair competion is so broad that it may include infringement of trademark. But let us assume that this is solely an action for unfair competition. To determine if from the facts herein obtaining fraud must be imputed to the appellant, let us fall back upon the record.

There is evidence that since 1933 the plaintiff has been manufacturing and selling in the market "MAHABA REGALIZ" cigarettes wrapped in labels like Exhibit B. In 1934, plaintiff registered its wrapper with the Bureau of Commerce and the corresponding certificate of registration of trademark was issued. The plaintiff's products became popularly known in the market as "MARCA NIYOG" by reason of the fact that on the face of the plaintiff's wrapper the picture of a coconut tree with fruits is clearly depicted. Appellant disputes the fact that the cigarettes of the plaintiff came to be associated in the mind of the public as "MARCA NIYOG", but there are strong and compelling reasons to believe the plaintiff's claim. Plaintiff would not otherwise advertise its cigarettes in the local magazines and periodicals in 1953 as "MARCA NIYOG", especially when those words do not appear on its label. In 1955, the defendant, without so much as securing a trade-

mark, began selling in the market longsized brown cigarettes like the plaintiff's, wrapped in labels which are closely identical to the plaintiff's Exhibit B, the only difference being that there are three coconut trees (two very small) in the defendant's wrapper (Exhibit F) in lieu of the one coconut tree in the plaintiff's. The words "MARCA NIYOG" are boldly printed in huge block letters upon the face of the defendant's wrapper. The defendant's attention was called forthwith by the plaintiff, demanding desistance from imitating its wrapper, Exhibit B. Defendant desisted and discarded its old wrapper, Exhibit F. Not long after, the defendant placed in the market a "new" wrapper, Exhibit 'I'. As shown above, this wrapper is also a close reproduction of the plaintiff's label.

From the fact alone that when its attention was called, the defendant desisted from using its wrapper, Exhibit F, the intention to imitate and defraud is manifest. Add to this the strong and striking resemblance of the defendant's wrapper, Exhibit 'I', to the plaintiff's label, Exhibit B, and the picture becomes clearer. Intent to imitate the plaintiff's product "may be inferred from similarity in the goods as packed or offered for sale to those of the complaining party." (Sec. 7, Act No. 666; Parke, Davis & Co. *vs.* Kiu Foo & Co., Ltd., 60 Phil. 928.) We cannot attribute the use by the appellant of the coconut fruit and tree as the dominant motif of its wrapper to any accident. The defendant, being a manufacturer of cigarettes like the plaintiff, must have known that the plaintiff's "MARCA NIYOG" is making good in the market. To paraphrase the Supreme Court in the case of Clarke *vs.* Manila Candy Co., 36 Phil., 100, 109–110, why is it that, with all the birds and fowls of the air, and all the fishes in the sea, and all the animals on the face of the earth, and all plants and trees in the forest, the defendant chose the coconut tree and fruit as its motif? As if this was not enough, the appellant printed in huge block letters on the face of its wrapper the words "MARCA NIYOG" knowing full well that the plaintiff's cigarettes have been identified in the mind of the public under that name. Was not the appellant animated by a desire and purpose to take undue advantage of the plaintiff's goodwill and to benefit unjustly from the reputation established by the plaintiff's cigarettes?

The facts have amply shown the guilt of the appellant of unfair competition. Plaintiff is entitled to the protection of its rights, and the court was correct in issuing the writ of permanent injunction prayed for. With the foregoing discussion, we believe that it is not necessary to dwell on the question of whether or not the term "MARCH NIYOG" had acquired a secondary meaning in favor

of the plaintiff, more so because this question has not been acurately presented. We understand from the decision of the lower court that the writ of injunction sought by the plaintiff was issued not on the sole basis of the defendant's having appropriated the term "MARCA NIYOG" but on the strength of all surrounding circumstances unerringly pointed to the conclusion that the appellant is guilty of unfair competition.

The award of damages and attorney's fees has not been questioned by either party. Considering the facts and circumstances of the case, we think that the amount awarded is reasonable and warranted under the premises.

WHEREFORE, the decision appealed from is affirmed in all respects with costs in this instance against the appellant.

IT IS SO ORDERED.

Natividad and *Sanchez, JJ.*, concur.

Judgment affirmed.